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WOMAN'S RIGHTS

UNDER THE LAW:

In Three Lectures,

DELIVERED IN BOSTON, JANUARY, 1861,

BY

CAROLINE H. DALL,

AUTHOR OF "WOMAN'S RIGHT TO LABOR," "HISTORICAL PICTURES RETOUCHED," &c., &c.

"Every leaf, we have seen, connects its work with the entire and accumulated result of the work of its predecessors. Dying, it leaves its own small but *well-labored* thread; adding — if imperceptibly, yet essentially — to the strength, from root to crest, of the trunk on which it has lived, and fitting that trunk for better service to the next year's foliage." — JOHN RUSKIN.

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To the Friends

OF

FORSAKEN WOMEN THROUGHOUT THE WORLD

I Dedicate this Book,

BECAUSE THE LIVES OF SUCH WOMEN ARE THE
LEGITIMATE RESULT OF THE SPIRIT
OF THE LAW.

211284

" Kind gentlemen, your pains
Are registered where every day I turn
The leaf to read them."

MACBETH.

" Some reasons of this double coronation
I have possessed you with, and think them strong."
" Why do you bend such solemn brows on *me*?
Have I commandment on the pulse of life?"

KING JOHN.

" According to the fair play of the world,
Let me have audience. I am sent to speak."

KING JOHN.

. . . . " Let this be copied out,
And keep it safe for our remembrance.
Return the precedent to these lords again."

KING JOHN.

PREFACE.

THERE seems, at first sight, a certain presumption in offering to an American public, at this moment, any book which does not treat of the great interests which convulse and perplex the United States. But experience has shown, that neither the individual nor the national mind can remain continually upon the rack; and both author and publisher have thought that a book upon a serious subject, popular in form and low in price, would find, perhaps, a more hearty welcome, under present circumstances, than in those prosperous days, when romances and poems, travels and biographies, are scattered over every table by the score.

"Woman's Right to Labor" owed its warm welcome, not to the power or skill of its author, but to the impatient interest of philanthropists in every thing relating to that subject. It remains to be seen, whether as large a portion of the public and the press are prepared to treat with candid consideration the subject of the present essays.

Both these volumes have been given to the world in their present detached form, that they may receive the benefit of general criticism; that errors, inaccuracies, or misapprehensions, may be perceived and rectified before they take a permanent position as part of a larger work. All criticism, therefore, which is *honestly intended*, will be received with patience and gratitude; but a great deal falls to the lot of every author, which cannot come under this head.

If we are told that a "wider acquaintance with the history" of a certain era will modify our views, it is natural to expect that an honest critic will show *where* the acquaintance fails, and how the views should be modified. When we are told that certain scientific illustrations, "though true in the main, are not accurate in detail," we may reasonably hope to see at least *one* error pointed out. When neither of these things is done, we sweep such remarks aside, as alike unprofitable to us and our readers.

A wide and generous sympathy in my aims has given me, thus far, all that I could desire of encouragement and appreciation; and this appreciation has come, in several instances, from a "household of faith" far removed from my own, and has been mingled in such cases with an outspoken regret, that one who "wrote so well, and felt so warmly,"

should not acknowledge on her pages the debt woman owes to Christianity, and unfurl an evangelical banner above a Christ-like work. Because such friends have spoken tenderly, I answer them respectfully; because I never saw any church-door so narrow that I could not pass through it, nor so wide that it would open to all God's glory, I answer them without fear.

And, first, I believe in God, as the tender Father of all; as one who cares for the least of his children, and does not turn from the greatest; as one whose eye marks the smallest inequalities of happiness or condition, and holds them in a memory which does not fail. I believe in Christ, as his authorized and anointed Teacher, come especially to reveal the fulness of God's love through his own life of practical good-will. I do not expect him to be superseded or set aside; and I do expect, that in proportion as men grow wiser, humbler, and sweeter, their eyes will open only the more widely to the great miracle of his spotless life, to the heavenly nature of his so simple teachings. And, next, I believe in my own work, — the elevation of woman through education, which is development; through labor, which is salvation; through legal rights, which are only freedom to develop and save, — as part of the mission of Jesus on the earth, authorized by him, inspired of God, and sure of

fulfilment as any portion of his law. If at any time I have lost sight of this in expression, it is because I have thought it impossible that the purpose and character of my work should be mistaken. I am a slow and patient worker, — patient, because one may well be patient, if God can; and therefore no disappointment, no lack of appreciation, could sour or disturb me.

If I have justified the publication of this essay at the present moment, it may be thought that I shall not be able to justify the principal presumption; namely, that of a woman who undertakes to write upon law.

Such a treatise as this would be valueless, in my eyes, if it were written by a man. It is a woman's judgment in matters that concern women that the world demands, before any radical change can be made. To understand the laws under which I must live, no recondite learning, no broad scholarship, no professional study, can be fitly required. Common intelligence and common sense are all that society has any right to claim of me. Because most women shrink from criticizing this law, I have criticized it.

Very recently, the "London Quarterly" said, in speaking of the republication of John Austin's work, that "English jurisprudence would be indebted for one of its highest aids to the reverential affec-

tion of a wife, and the patient industry of a refined and intelligent woman;" and Mrs. Austin defends her undertaking on this very ground, — that, if she had not superintended the work, *no one else would.* If John Austin's firm and penetrating intellect could not hold a score of persons about his lecturer's desk, and found its fit appreciation only in the grave, a conscientious woman need not shrink from any branch of his great subject, only because her audience will be small.

The words of John Ruskin, printed on my title-page, will show, as I hope, the modesty of my aim, and the conscientious steadfastness of my purpose. As the leaf is to the tree, so is the individual to society. Tear away a single leaf from the towering crest, and the trunk does not seem to suffer: nevertheless, one small thread withers, one channel dries up, one source of beauty and use fails; and, from that moment, a certain sidewise tendency marks the growth.

To compact carefully one "well-labored thread" is all that I have sought to do, — to write a little book, that women might be won to read, as conscientiously as if it were a heavy tome, to be endlessly consulted by the bench.

In writing these three lectures, I feel quite sure that I must have made use of many significant expressions borrowed from those who have broken

the way for me. For many years an extemporaneous lecturer on this and kindred topics, certain modes of expression have been so wrought into the fabric of my thought, that I do not *know* where to put my quotation-marks. To Mrs. Hugo Reed, for instance, I know I must be under great obligations; and I can only hope, that she will trust me with her thoughts and words as generously as I desire to trust all my readers with mine. It is little matter who does the work, so that it be done; but I owe to one author, in particular, something like an explanation.

A few days before the third of these lectures was delivered in Boston (that is, before Jan. 23, 1861), a gentleman from Paris brought me from Madame d'Héricourt a book called "La Femme Affranchie," an answer to Michelet, Proudhon, Girardin, and Comte, which its author kindly desired I should translate for the American market. Unable to comply with her request, some weeks elapsed before I opened the book. I was struck with the energy, self-possession, and rapidity with which she seized the various points of the subject, with the thoroughness of her assault, and the temper of her argument. I did not sympathize in all her methods or conclusions; but I was interested to observe, that, in what I had then written and publicly spoken of the relations between suffrage and hu-

manity, I had in several instances used her very words, or she had used mine. I did not alter my manuscript; but, with better times, we may hope for a translation of her spirited volumes, and the public will then do justice to her precedence.

I have been anxious to have positive proof of my conjecture in regard to the authorship of the "Lawe's Resolution of the Rights of Women;" but persevering endeavors in England, in several directions, have only left the matter as it stands in the text. It would be very interesting to know something of the private history of the man who wrote that book.

In the first of the following lectures, I have ventured a rhetorical allusion to the blue-laws of Connecticut. Since it went to press, I have seen it stated on high authority, that any American writer who should "profess to believe in the existence of the blue-laws of New Haven would simply proclaim himself a dunce," and the "Saturday Review" handled without gloves for taking this existence for granted.

I never supposed that the term "blue" applied to the color of the paper on which such laws were printed, any more than I supposed "blue Presbyterianism" referred to the color of the presbyters' gowns. I supposed it was the outgrowth of a popular sarcasm, descriptive not of a "veritable

code," nor of a "practical code unpublished," but of such portions of the general code as were repugnant to common sense and the genial nature of man. This I still think will be found to be the case; and it is certainly to Connecticut divines and Connecticut newspapers that we owe the popular impression.

It was in the forty-sixth year of the independence of the United States that S. Andrus and Co. of Hartford published a volume purporting to be a compendium of early judicial proceedings in Connecticut, and especially of that portion of the proceedings of the Colony of New Haven commonly called the "blue-laws." Charles A. Ingersoll, Esq., testified to the correctness of these copies of the ancient record.

As I quote this title wholly from memory, I am unable to say whether the colony ever fined a bishop for kissing his own wife on Sunday; but I have read more than once of such fines; and, if no laws remain unrepealed on the Connecticut statute-book quite as absurd in their spirit and general tendency, there are many on those of Massachusetts and New Hampshire: so I shall let my rhetorical flourish stand.

To my English friends, to Mr. Herndon of Illinois, Mr. Higginson, and Samuel F. Haven, Esq., of Worcester, I owe my usual acknowledgments for

books lent, and service proffered, with a generosity and graceful readiness cheering to remember.

Nor will I omit, in what may be a last opportunity, to bear faithful testimony to the assistance rendered, in all my studies of this sort, by my friend Mr. John Patton of Montreal. No single person has helped me so much, so wisely, or so well.

In order to secure technical accuracy, my manuscript and proofs have been subjected to the revision of my friend, the Hon. Samuel E. Sewall. The principal alteration which Mr. Sewall has made has been the substitution of the word "suffrage" for that of "franchise;" which latter I used in the Continental fashion. I prefer it to "suffrage," because it seems to have a broader signification; but I yield it to his suggestion.

I would gladly have dedicated this volume to the memory of the late John W. Browne, whose pure purpose and eminent gifts made me rejoice, while he was living, to call him friend. As, however, he never read the whole of the manuscript, I have given it a dedication, which no one, who knew him well, will fail to perceive includes him.

Caroline H. Dall.

No. 5, Ashland Place,
Sept. 1, 1861.

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I.

THE ORIENTAL ESTIMATE AND THE FRENCH LAW.

"We seldom doubt that something in the large
Smooth order of creation, though no more
Than haply a man's footstep, has gone wrong."

E B. Browning.

"The law of God, positive law and positive morality, sometimes *coincide*, sometimes do *not* coincide, and sometimes *conflict*."

John Austin: *Province of Jurisprudence Defined.*

"OF Law, no less can be said than that her seat is the bosom of God; her voice, the harmony of the spheres. All things in heaven and earth do her reverence; the greatest as needing her protection, the meanest as not afraid of her power."

In reading this magnificent and well-known sentence from Hooker, the imagination is easily kindled to a divine prescience. We accept the definition. Fair before us rise the graceful proportions of eternal order in society,

upon which wait present peace and future progress; towards which those bow most reverently who live most purely and see most clearly. But alas! if the reader be a woman, her heart may well sink when the enthusiasm of the moment has passed; and she *must* ask, with a feeling somewhat akin to displeasure, "Of *what* law realized on earth, administered in courts, dealt out from legislatures or parliaments, from republics or autocrats, were these sublime words written?"

Where in the soft shadows of Oriental hareems, in the gloom of Hindoo caves, Egyptian pyramids, or Attic porches, sculptured by divinest art, and luminous with marbles of every hue; where in the porticos echoing to Roman stoicism, or the baths floating on Roman license; where in the saloons of French society, or by the hearths of good old England; *where*, alas! in the free States of America, whether North or South, — has a system of law prevailed that women could think of, without blasphemy as sitting in the

bosom of God, and so entitled to the reverence of man?

We outgrow all things. Always the new patch breaks the fabric of the old garment; always the new wine shatters as it ferments the well-dried leathern pouch which held the vintage of our ancestors. But most of all do we outgrow, have we outgrown, our laws. They fall back, dead letters, into the abyss of that past from which we have emerged. We put new laws upon the statute-book, and do not pause to wipe out the old; finding our protection in the public feeling and the public progress, if not in the traditions of the elders.

This, and this only, saves old systems from violent demolition. Were the State of Connecticut at this moment to attempt to put in force such of the blue-laws as are technically unrepealed, she would be met by the open rebellion of her highest officer; and the chief-justice who should attempt to fine a bishop for kissing his wife on Sunday might shake

hands cordially with the chief-justice who once ruled that a man might beat his wife with a stick no bigger than his thumb!

The laws which relate to woman are based, for the most part, on a very old and a very Oriental estimate of her nature, her powers, and her divinely ordained position. We shall see this, if we follow the course of legal enactments or religious prohibitions from the beginning. When the subject of Woman's Civil Rights first came to be considered, it was customary to quote from the scholars one of the sayings of Vishnu Sarma: "Every book of knowledge which is known to Oosana or to Vreehaspatee is by nature implanted in the understandings of women."

Nobody asked what *sort* of knowledge was known to these two deities; but most readers took it for granted that it was divine: and ordinary people asked why, if society began with this reverent faith, we had nothing better now than the practical scepticism of priest and lawyer. When the names of these

two deities were translated into Venus and Mercury (that is, into *love* and *cunning*), the announcement seemed more in keeping with the subsequent revelations of Vishnu Sarma: —

"Women, at all times," he says, "have been inconstant, even among the Celestials."

"Woman's *virtue* is founded upon a modest countenance, precise behavior, rectitude, and a *deficiency of suitors*."

"In infancy, the father should guard her; in youth, her husband; in old age, her children: for at no time is a woman fit to be trusted with liberty."

"Infidelity, violence, deceit, envy, extreme avarice, a total want of good qualities, with impurity, are the innate faults of womankind."

These extracts will throw some light, perhaps, upon the knowledge of Oosana and Vreehaspatee, and will save modern women from any very strong desire to restore the "good old rule." After such a commentary on this seeming compliment, we shall not think it strange, that, in a country where dia-

lect is the exponent of condition, the most ancient drama represents the Hindoo wife as addressing her lord and master in the dialect of a slave.

"It is proper," says an ancient Hindoo scripture, "for every woman, *after* her husband's death, to burn herself in the fire with his corpse." I quote this saying here only to advert to the power of public opinion, which has been strong enough for ages to compel this sacrifice. But for it, many a woman, who had been burnt during her whole conjugal life in the fires of tyranny, self-will, and arrogant dominion, might have hailed with joy the hour of her release. *Under* it, such a woman went calmly to the new martyrdom.

An ancient Chinese writer tells us, that the newly married woman should be but an echo in the house. Her husband may strike her, starve her, nay, even *let her out!* Such was the spirit of most Oriental custom and law. It has crossed the Ural; so that Köhl, the German traveller, tells us that a Turk blushes and

apologizes when he mentions his wife, as if he had been guilty of a needless impertinence. The same thing is reported of one of the Sclavic tribes, among whom it may have been borrowed from their Ottoman conquerors.

There were, however, singular exceptions to the prevailing estimate. In the Island of Cœlebes, where the government is republican in form, the president, and four out of six councillors, are not unfrequently women. In the diary of the Marquess of Hastings, we are told, that among the Garrows, a populous and independent clan in the hill country in the north-east of India, all property and authority descend in the female line. On the death of the mother, the bulk of the possessions goes to the favorite daughter, *so* designated, without regard to primogeniture in her lifetime. The widower has a stipend settled on him at the time of marriage, and a moderate portion is given to each daughter. The sons are expected to support themselves. A woman,

called Muhar, is the chief of each clan. Her husband is called Muharree, and has a representative authority, but no right to her property. Should he incline to squander it, the clan will interfere in her behalf. When the Duke of Wellington fought the battle of Assaye, in 1803, against the Mahrattas, a woman, the Begum of Lumroom, belonging to the military tribe of Nairs, fought against him at the head of her cavalry. In this tribe the succession follows, according to the duke's report, the female line. This was on the coast of Malabar, south of Bombay, and in what we should call the south-western part of the Deccan. In spite of the difference in orthography, and the statement about the north-east, I think these stories may refer to the same clan. An orthography so variously rendered as the East Indian is a blind guide.

Quite evident is it that the proverbs of more western and later-born nations grew out of the estimate of Vishnu Sarma and his compeers. Look at them : —

"A rich man is never ugly in the eyes of a girl."

"A beautiful woman, smiling, tells of a purse weeping."

"Every woman would rather be handsome than good."

"A house full of daughters is a cellar full of sour beer."

"Three daughters and the mother are four devils for the father."

"A man of straw is worth a woman of gold."

"A rich wife is a source of quarrel."

"'Tis a poor roost where the hen crows."

"A happy couple is a husband deaf and a wife blind."

It is quite evident, I think, that men made these proverbs; and somewhat mortifying, not to *women only*, but to our common humanity, that they should have the run of society and the newspapers, in an age which has given birth to Florence Nightingale, Mary Patton, and Dorothea Dix, — women who have been born only to remind us that their counterparts appeared a thousand years ago.

Aristophanes and Juvenal, Boileau and Churchill, turn these slanderous proverbs into

verse, if not into poetry; and, in examining the laws of more modern times, we shall constantly trace the effect of the old Oriental estimate. In all such examinations, we have four points to consider: —

1st, That estimate of woman on which her civil position is founded, and those rights of property which are granted or refused to her accordingly.

2d, Such laws as relate to marriage and divorce.

3d, Such laws or customs as keep woman out of office, off the jury, and refuse her all authorized legitimate interference in public affairs.

4th, Her right of suffrage.

Of these points, the discussion of such laws as relate to marriage and divorce is alone to be restricted by any considerations of prudence. It has never seemed to me a wise thing to open needlessly this discussion; and the opening of it by women is needless, while they are in no position to discuss it equally

with men. In the marriage relation, whatever is the certain loss and misery of one sex is also the certain loss and misery of the other. Whatever inequality and injustice appertains to it will be best removed when the two sexes can consider it together, like two equal and competent powers.* I shall advert to the laws of marriage and divorce, only to point out mistakes or bad results not *generally* perceived, and make no attempt to treat them at length.

When we consider what sort of public opinion has educated woman, what estimate has lain at the bottom of all the laws passed concerning her, it does not seem strange, that, after ages passed in a false position, she should somewhat approximate to this estimate; so that we say with pain of the mass of women, that *they themselves* need a change quite as much as their circumstances. It is

* Of course, I do not mean to be understood here as objecting to any temperate and earnest attempt by men or women to *amend law.*

common, in treating of this subject, to *dwell* on the position of woman under the Roman law; but very little is gained by it. We can see by the literature of the nation what estimate was put upon woman, and what share she took in the degradation of society; but how far this was the consequence of bad law, what changes were wrought from the time of Justinian, not merely in law, but in moral soundness under the law, it is not easy to tell in a country which had neither printing-presses nor newspapers. We have only the judgment of a few men, themselves law-makers, to rely upon; and their opinions had a very limited circulation in their lifetime, and could not be tested by any cotemporaneous verdict. It is in vain that we listen to testimony when no competent witnesses appear on the "other side." Women, however, ought always to remember to whom they owe the changes made in Justinian's time. The life of Theodora is yet to be written. The scandalous anecdotes of a secret history must some day

be balanced by the public testimony of Procopius, and some good be told of the woman whose first thought, when raised to empire, was for the companions of her previous infamy, and whose influence over her husband never faltered, and is visible in every modification of the laws relating to her sex. If we could realize the corruptness of the higher classes of society, we should not wonder at the emperor who chose his wife from the streets; and the fact itself tells a story which he who *heeds* need not misunderstand.*

---

* It will easily be conjectured that I do not feel competent to treat the great subject of Roman legislation for women, in the noble and extended manner which is at once, as it seems to me, necessary and possible. Perhaps I shall never become so.

It seems to me proper, however, that I should indicate my dissatisfaction with existing methods in the clearest manner, and drop a few hints, as I do in the text, as to the difficulties in the way.

Roman sepulchral inscriptions, of the era generally considered the most licentious, bear witness in the fullest manner to the existence of chastity and domestic virtue. A sepulchral inscription, it may be argued, is a poor witness to facts. I would suggest in reply, that a nation ceases to commemorate the virtue which has ceased to exist, or which it has, through a general depravity of manners, ceased to respect.

The laws which most directly affect us here in America are the laws of France and England: the laws of France, because they modify the code of Canada, Florida, and Louisiana; the laws of England, because in her common law, recognized all over the country by all the States, we find the basis of all that is objectionable in our legislation.

First, then, let us consider the estimate on which the French law is based, and then its property-laws. Civil position and the right of franchise can be disposed of in a few words the world over. "There is one thing which is not French," said Bonaparte, as he closed a cabinet council, while preparing his famous Code; "and that is, a woman who can do as she pleases."

The estimate of woman in France is of a double character.

It is *low*, because marriage among the upper classes is, at the best, only a well-made bargain.

It is *high*, because women have been en-

couraged to enter trade, both by law, which protects them in their capacity as merchants, and by the military character of the nation, which prevents men from entering business.

It is *low*, because throughout the provinces there are remnants of old feudal custom, which keep her in the position of a slave. The peasant's wife rarely sits at table: she crouches in the chimney-corner, eating from the stew-pan; while her husband sits at the table in state before his porringer. Yet, in another respect, this very woman helps to raise the estimate of her sex; for she works with her husband in the field, while a wealthier wife is often only a burden. Like him, she is exposed to all the changes of the weather. Pregnancy does not save her from the plough or the vintage. While her husband rests at noon, she must nurse her babe or prepare his meal.

In most countries, it is desirable to turn the thoughts of women away from love, and

give them some healthier occupation. In France, it would be well to stimulate the affections, because covetousness, a desire of worldly position, or splendid wealth, is the main motive to a marriage. With us, love constitutes the whole life of many a woman; while it may be only an episode in that of her husband.

In France, even woman seldom loves, but marries to *establish herself* in life. It is against this greed that she needs to be cautioned, *not* against that emotion and sentiment which God meant should be both a safeguard and a blessing. *Love* must rescue woman from vanity, self-indulgence, and empty show. Only through its divine power will she come to perceive the true nature of that shameful bargain, by which she surrenders what is most precious to appease the thirst of society. If we would save and serve humanity *here*, we must let natural susceptibilities have their full play.

At the same time, the business freedom

which women enjoy in France has led many women to reflect thoroughly and act vigorously. The reading world is deluged with books relating to woman, — her education, her labor, and her civil rights. Out of this condition of things spring a class who long to share the sorrow and responsibility as well as the joy of liberty. They will not accept the tenderness and pity of such men as Michelet, who veil a profound sensualism with the graces of an affected sentimentality. Sometimes, like George Sand, these women break loose from social ties, test the world for themselves, and, when they have squeezed the orange which looked so tempting, show to others the empty, bitter rind, and return gladly to the daily bread of Divine Ordinance. Once, in Rosa Bonheur, fresh and wise, energetic and vigorous, the French woman has challenged the attention of the civilized world. With no womanish weaknesses, frank, loyal, and endowed with a serious and reflective nature, this artist has asked no leave to be of

church or society. "I have no patience," she once said, "with women who ask permission to think. Let women establish their claims by great and good works, and not by conventions." She took the whole world in her two brave woman's hands, *found* her inheritance, and resolved to enjoy it.

It is in France, too, that Clara Demars thinks out all the psychological relations of love and marriage, and reminds us of Mrs. John Stuart Mill, by saying that "truth will never reign over the world, nor between the sexes, until, by being set free, woman loses all temptation to dissimulate."

There, too, Flora Tristan provokes a smile by echoing in prose the rhythmic platitudes of Mr. Coventry Patmore, and claiming, not *equality*, but sovereignty and autocracy, for woman.

There Pauline Roland boldly claims that marriage shall never be tolerated, till man as well as woman is compelled to keep the law of chastity.

There Madame Moniot claims her civil rights from the lecturer's desk; and Désirée Gay, interesting herself practically in the question of woman's labor, rules the women of the national workshops.

When both sides of this picture are studied; when we look back, on the one hand, to Marie Antoinette and Madame Récamier, and, on the other, to Madame Roland, Madame de Staël, and Marie de Lamourous, — it is not strange that the fanciful protectorship of such men as Michelet should be balanced by a claim, made not only by Talleyrand, but Condorcet, for woman's full equality as a laborer and a citizen. And this varying and inconsistent estimate of woman, made evident in the social, industrial, and literary spheres of France, is strangely sustained by her legal enactments. The "Code Napoléon" is founded on the Roman, and is very similar to the English common law, so far as it concerns woman: but beside this law, which is called, in reference to married women, the *dotal*, there

is another, called the *communal;* and, before marriage, parties may choose between these two. That contract once signed, they must abide by their choice ever after. If the dotal law is founded on Roman law and usage, and so came naturally enough to prevail in Southern France until the time of the Revolution; so the communal law prevailed at the North, and is founded on the German habits and laws, beneath which always lay the idea, that, if not technically a laborer, the wife, by care and industry, — the thrift of the housewife, — contributed to the acquisition of property.

It is very singular that all the nations of Continental Europe, with the exception of Spain, have rejected the dotal or Roman law. The objection to it seems to have arisen out of the fact, that it permits the wife's property to be settled *solely* on herself, and to be so secured against her husband's debts. In the community of estates, the property of each is liable for the debts of either. It was on this account, probably, that, while the "Code Napo-

léon" elucidated and defined the dotal system, it expressly provided for the right of choice in the parties, and declared, that, if no choice were made, they should be supposed to be living under the German or communal law.

The Dutch law is essentially the same. When the "Code Napoléon" came into force, there were not wanting French legislators to say, that woman was now better *protected* than ever before. But this *legal protection* is of a kind due only to minors and lunatics. This law, like our own, suspects, not only the *intelligence* of woman, but her integrity; and aims not to protect *her*, but *man*, against her weakness or fraud. In marriage, the husband administers for both, not only the common property, but her personal possessions. That is to say, by *pretending to protect it*, the law *takes away* from woman her personal property. It often happens, that a woman who has brought her husband a large property is compelled to shift in narrow ways, like a beggar

or a miser, on account of his parsimony or personal ill-will.

The wife cannot give away the smallest article, not even such as have been gifts to her: and the 934th article of the "Code Napoléon" declares, "that the wife may not accept a gift without the consent of her husband; or, if he should refuse, without the approbation of a magistrate." She cannot pledge their common property, even though it were to set her husband free when imprisoned for debt; nor, in the event of his absence, to secure necessaries for his children, without the same magisterial authority. Commonly, this authority would be readily obtained; but it is easy to see that many cases might arise, when, from defeated purposes, personal enmity, or the influence of the husband against her, it would be all but impossible.

Even in case of bankruptcy, French legislators tell us, the rights of the wife are protected. But this very protection is insulting; for it treats the wife as if she must of necessity

be either an inert instrument in the hands of her husband, or a dupe, whose weakness he might readily abuse. *Through* such protection, the dishonest merchant finds it easy to defraud his creditors.

Now, this "Code Napoléon" says that "the husband owes protection to his wife; and the wife, on her side, owes obedience to her husband:" but it goes on to secure the obedience by giving the husband an unlimited right to the person of the wife, without in any way providing the promised protection.

"The wife must live with her husband, and follow him wherever he sees fit to go. As for him, he must receive her, and furnish her with necessaries according to her wealth and rank."

Now, this clause actually constrains no one but the wife; for what would be the condition of a woman who followed her husband against his will, and remained *under* his roof when he was determined that she should quit it? Under such circumstances, his recognition of her wealth and rank would be

very apt to fall to the level of his own irritation.

The French code will interfere to protect a wife against the total loss of her property, if she can prove *some* loss already experienced, either from the improvidence or the bad conduct of her husband; but it keeps her powerless to protect herself against that first loss. Having thus, and for such reasons, obtained a separate jurisdiction over her property, she cannot alienate, mortgage, or acquire a title to new property, without her unworthy husband's consent in person or on paper. The guardianship of the children is left to the survivor of the marriage; but the mother's right in such case may be restrained by the father's and husband's will. He can appoint a trustee to be associated with her. As a business woman, even if separated in estate, the wife cannot make or dissolve a contract without the consent of her husband.

As a "public merchant" under the communal system, — that is, pledged in *her own*

name, — she is free from this restraint. As a citizen of the French republic, she in that case supports, conjointly with her husband, all State charges. She is taxed as much as he; for their common income is diminished as much for one as for the other. She has no suffrage; but, on the other hand, she is not liable for military service. She has no rights: a state of things, which, if it be excusable when she is absorbed into her husband's personality, is only absurd when she fulfils all the functions of a citizen. Well may Legouvé exclaim, "that, if the household be woman's own sphere, she ought to be queen in it; and her own faculties should secure her this supremacy. Her opponents should be forced, on their own principles, to emancipate her as daughter, wife, and mother." The woman who owns an estate, is, under this law, sole mistress of it. She signs the leases and makes the bargains. She pays the State tax, an additional rate to her own department, a town tax, and a tax on roads. It is with her

that the local or general government treat, if they cut through her estate for public ends. Against them, if wronged, she herself carries suit. By her influence as a proprietor, she controls many votes; yet she is not permitted to cast one. She cannot *directly* control the position of the very representative who imposes her taxes. She is in the same position with regard to all the higher officers, who decide such questions as affect the value of her estate. As citizen, therefore, under the communal law, her position is uncertain and contradictory.

So much for the estimate of woman in France; and so much for the rights of property, of marriage, and of suffrage, founded upon that estimate. What is her *civil position?* what office or employment is open to her? Women are better off in France, it is again said, than ever before. As merchants, fair chances, barred by some contradictions and anomalies, await them; but whoever ponders their condition cannot fail to see, that

here, as elsewhere, the protection afforded by the law is merely the vigilance of a police officer, which protects the criminal, not for *her own* sake, but for that of society, which her very existence is supposed to endanger.

The most desirable amelioration of her lot will be secured by the admission of her free personality. When society strikes out from the statute-book all distinctions of sex, and admits that she is a person capable of thinking and acting for herself, she will lay the foundation of a new civilization.

In France, we are told, women sometimes fill public functions. They may be postmistresses, and inspectors of schools; or they may take charge of the bureaus of wood or tobacco. They may also be inspectors of public asylums, — a right and a duty of very great importance. As a public functionary, woman fills few and inferior posts; but in these she exercises and possesses all the rights of a man, with one exception, — that exception, alas! the very keystone on which all human

success must rest: I mean, the right of *promotion*. Do not smile, prompted by an unworthy apprehension of my meaning. It is *not* because women are more greedy or more ambitious than men that I call the right to promotion the keystone of their success. Only small and narrow natures can be content in a treadmill. If constant motion will not carry her over the top of the wheel, instinct prompts the reasoning creature to abate her efforts. No man of his own free will turns into a road which abuts upon a stone wall. The State turnpike is better, where the wayfarer may die by a sunstroke, or perish of a frost; where endless miles stretch over uncultivated wastes: better; for here, at least, the way is open, the sky overhead. — Before proceeding to speak of the English common law, it will perhaps be well to turn from the "Code Napoléon" to the law of Louisiana, in which the influence of the two forms of French law still shows itself. I do not consider the laws of Canada, because they are complicated, not

only by the English common law, but by Canadian statutes, somewhat in the spirit of our own recent enactments, and by curious archæological remains of feudal law, — laws which would sound like the decrees of Haroun al Raschid, were I to tax your soberness by setting them before you. They are, let us be thankful, of small practical importance, as is the great body of all law.*

In Louisiana, according to the civil code of 1824, the partnership of gains arising during coverture exists by law in every marriage, without express stipulation to the contrary. But the parties may regulate their married obligations as they please, provided they do nothing immoral. The wife's property is "dotal." What she *brings*, her paraphernalia,

* The great body of all law is of small practical importance, because, in spite of the five points of Calvinism and the long faces of many bearded philosophers, the majority of mankind not only *obey* the law, but transcend it, — do better than it requires. It is only the few who transgress; and thus many absurdities are never or very rarely dragged into the light of a "decision."

is "extra-dotal." The dowry belongs to the husband during marriage; and he has the administration of the partnership, and may alienate his revenue, without his wife's consent: but he cannot convey the common estate. If, before marriage, he should stipulate that there should be no partnership, his wife preserves the entire control of her own property. Her heirs take her separate estate; even money received by her husband on her account. If there be no agreement as to the expenses, the wife contributes one-half of her income. Her landed estate, whether dotal or not, is not affected by his debts. She is a privileged creditor, and has the first mortgage on his property.

If the parties have agreed to the "partnership of gains," the common property is liable for the debts of either. On the death of either party, one-half of the property goes to the survivor; the other, to the heirs of the dead partner.

You will perceive that this law seems a

loose mixture of the Roman or dotal sytem with the German communal law, based on the partnership of gains; but the common law takes it for granted that the partnership exists, where there is no express stipulation to the contrary. As a public trader, the wife may bind herself in whatever relates to her business, without her husband's consent, — may even make a will; and reference is made to the "Code Napoléon," in the same way, to all appearance, that we refer to the common law of England.

The estimate of woman upon which the "Code Napoléon" is founded has the same effect upon her earnings as the English common law. As, in marriage, the policy has been to keep her subordinate and inferior; to give her no privileges which should lead to independence: so, in business, the effect of the law is to keep the price of her work down, and give her as few escapes from household drudgery as may be; to offer her, in fact, no *temptation* to escape.

As polishers, burnishers, and copper-workers; as glove-makers, enamellers, and wire-drawers; as flax-beaters and soakers; as spinners, gauze-workers, and winders; as basket-makers, and temperers of steel; as knife-handlers, embroiderers, and wheel-turners; as velvet-makers, cockle-gatherers, and ivory-workers; as packers, knitters, satin-makers, and folders; as picture-colorers, and workers in wood; as casters, weighers, and varnishers; as shoe-makers, strap-makers, lace-makers, and cocoon-winders, — the French employ many women; and the estimate of the law is practically indicated, there as well as here, in the price of the labor done.

The highest wages marked upon my list are those paid to the workers in a porcelain factory, who received one franc and fifty centimes a day, or thirty cents. The lowest are those paid to cockle-gatherers and lace-makers; that is, from twenty to twenty-five centimes, or from four to five cents a day.

The fact that the poor lace-makers, who lose

their eyesight and their lives bending over their bobbins, are paid the same wages as the loitering girls who pick up gay cockles on the beach, shows how little the price of the labor depends on the value of the work done, and tells the whole story in a breath. The wages of the needlewomen of Paris have been diminishing ever since 1847, and, according to the "Revue des Deux Mondes," now average only from twenty to twenty-five cents a day.

II.

THE ENGLISH COMMON LAW.

"And we, perusing o'er these notes,
May know wherefore we took the sacrament,
And keep our faiths firm and inviolable."

KING JOHN.

IN approaching the subject of English common law, we come nearer to our own special interests. Twenty years ago, I am safe, I think, in presuming that this law was the basis of all our legislation in regard to woman, if we except that in French or Spanish territory; and, in criticizing its provisions, I shall criticize all that is objectionable, whether in the laws that have been changed, or in the laws that remain to be changed, in our own States.

If we were to examine the literature of England with reference to this subject, we should probably find from the beginning many

protests against the present position of woman. It is never safe, for instance, to assume what poets may or may *not* have said. If Dryden could get so far as to say that there is "no sex in souls," one would think the gentle Chaucer and heavenly-minded Daniel doubtless discerned still deeper things; but of lawyers we may say with some truth, that their early protests were so quietly made as scarcely to be recognized, or were made for the most part by unread and anonymous writers.

In the "Lawe's Resolution of Woman's Rights," published in the year 1632, there seems to be a distinct recognition of the true nature of the law: —

"The next thing that I will show you," says the author, "is *this* particularity of law. In this consolidation which we call wedlock is a locking together. It is true, that man and wife are one person; but understand in what manner. When a small brooke or little river incorporateth with Rhodanus, Humber, or the Thames, the poore rivulet looseth her name; it is carried and recarried with

the new associate; it beareth no sway; it possesseth nothing during coverture. A woman, as soon as she is married, is called *covert;* in Latine, *nupta*, — that is, 'veiled;' as it were, clouded and overshadowed: she hath lost her streame. I may more truly, farre away, say to a married woman, Her new self is her superior; her companion, her master."

Still farther: "Eve, because she had helped to seduce her husband, had inflicted upon her a special bane. See here the reason of that which I touched before, — that women have no voice in Parliament. They make no laws, they consent to none, they abrogate none. All of them are understood either married or to bee married, and their desires are to their husbands. *I* know no remedy, though some women can shift it well enough. The common lawe here shaketh hand with divinitye."

In this plain statement of the old black-letter book lies the root of the evil with which we contend: "All of them are married or to bee married, and their desires are to their husbands." Woman, single, widowed, or pursuing an independent vocation, never seems to have entered the head of the law, as a possible

monster worth providing for. The world of that day believed in the *sea-serpent*, but not in her! This book, "The Lawe's Resolution of the Rights of Woman," was, so far as I know, first brought under our notice by Mrs. Bodichon's quotation, in her "Brief Summary of the English Law." Then a few copies found their way to this country, and into the hands of curious persons. People began to wonder who wrote the quaint old book. In pleading before our own Legislature in the spring of 1858, I was myself asked by the committee who was its author; and I think it but right to rescue from oblivion the probable name of this early friend to woman and justice. It is always difficult to trace an anonymous book, and, this time, more difficult than usual, as it was probably published *after* its author's death.

Sir John Doderidge, to whom my attention was directed by an eminent antiquarian, was an able lawyer, and an industrious compiler of law-books of a special kind. He was from

Devonshire, and admitted as a barrister in 1603. He was successively appointed Solicitor-General, Judge of the Common Pleas and of the King's Bench. Among the works known to be his, yet not commonly included in the list of his works, are the "Lawyer's Light," published in 1629; and "The Complete Parson," with the laws relating to advowsons and livings, in 1670, — books of the same class, character, and appearance as the "Lawe's Resolution."

As he died in 1628, I was at first inclined to suspect the fairness of this inference: but a further examination showed that all his publications were *posthumous;* which accounts, perhaps, for the *candor* of their covert satire. A few particulars of his life and standing may be gained from the new Life of Lord Bacon, where Hepworth Dixon says that "the Solicitor-Generalship, vacant once more, is given, over Francis Bacon's head, to Sir John Doderidge, Serjeant of the Coif." In 1606, when Sir Francis Gawdy dies, "Coke goes up to the

bench; and Doderidge, the Solicitor-General, ought, by the custom of the law, to follow Coke, leaving the post of Solicitor void: but Cecil raises Sir Henry Hobart, his obscure Attorney of the Court of Wards, over both Doderidge and Bacon's head, to the high place of Attorney-General." Since that day, Bentham and Catharine Macauley, Mary Wollstonecraft, and John Stuart Mill, have made the same complaint; sustaining it, however, by vigorous argument for woman's full emancipation, and a demand for the right of suffrage.

Let us look at this English law. So far as it affects *single* women, it is very simple.

A single woman has the same rights of property as a man; that is, she may get and keep, or dispose of, whatever she can. She has a right, like man, to the protection of the law, and has to pay the same taxes to the State.

"Duly qualified," she may *vote* on parish questions and for parish officers; and "duly qualified," in England, means that she shall

have a certain amount of property, and so a vested interest in the prosperity of her parish. If her parents die without a will, she shares equally with her brothers in the division of the *personal* property; but her eldest brother and his issue, even if female, will take the real estate as heir-at-law. If she be an only child, she inherits both personal and real, and becomes immediately that most pitiable of creatures, an heiress.

The church and all state offices are closed to women. They find some employment in rural post-offices; but there is no important office they can hold, if we except that of sovereign. This is sometimes spoken of as an inconsistency; but if we reflect upon the position of a constitutional sovereign, whose speeches are the work of her minister, and whose actions indicate the average conscience of a cabinet council, we shall find her legally but very little more independent than other women technically classed with minors and idiots.

There have been a few women governors of prisons, overseers of the poor, and parish clerks; but public opinion still effectually bars most women from seeking or accepting office.

The office of Grand Chamberlain was filled by two women in 1822. That of Clerk of the Crown, in the Court of Queen's Bench, has been granted to a female; and, in a certain parish of Norfolk, a woman was recently appointed parish clerk, because, in a population of six hundred souls, no man could be found able to read and write!

In an action at law, it has been determined that an unmarried woman, having a freehold, might vote for members of Parliament. Mr. Higginson tells us that a certain Lady Packington returned two.

In all periods, there have been women who have held exceptional positions, under peculiar influence of wealth or rank or circumstances; and though this has not affected the position of other women, or given them any

more freedom, yet it is valuable in itself, because it has kept the *possibility* of their employment always open, and acted like a practical protest against the law.

The Countess of Pembroke was hereditary Sheriff of Westmoreland, and exercised her office. In the reign of Queen Anne, Lady Rous did the same, "girt with a sword." Henry VIII. once granted a commission of inquiry, under the great seal, to Lady Anne Berkeley, who opened it at Gloucester, and passed sentence under it.

Some of the old legal writers averred, that a woman might serve in almost any of the great offices of the kingdom. Lately we find it stated that a woman may be elected as constable, since she can *hire a man* to serve for her; but she may *not* be elected "overseer of the poor, because, in this case, substitution, if not impossible, would be difficult!

What were the peculiar political excitements which enabled Lady Packington to return two members of Parliament, we are

not told; but it is quite certain that women of twenty-one, duly qualified, cannot and do not vote for members of Parliament by virtue of that decision. In rural districts, where personal influence weighed a good deal, such a vote might be courteously winked at. A woman of property and standing, in Nova Scotia, has in this manner, for more than forty years, cast her annual vote, without rebuke or interruption; but, should any *number* of women act on this precedent, a legal restraint would doubtless be laid.

No single woman, having been seduced, has any remedy at common law; neither has her mother nor next friend. If her father can prove *service* rendered, he may sue for loss of service.

In what "bosom of divinitye" does this law rest? Here is a remedy provided for the loss of a few hours, but no penalty held up *in terrorem*, to warn man that he may not trifle with honor, womanly purity, and childish ignorance or innocence.

In the eye of this law, female chastity is only valuable for the work it can do. It must not be thought, however, that the English common law stands alone in this moral deformity. Under the French law, female chastity does not seem of any worth, even in consideration of the work it can do. In honest indignation, Legouvé exclaims, —

"Let a man, who has seduced a child of fifteen years by a promise of marriage, be brought before a magistrate. He has under the law a right to say, 'There is my signature, it is true; but I deny it. A debt of the heart is void before the law.'"

Thus everywhere, in practice and theory, in society and in law, for rich and poor, is public purity abandoned, — the bridle thrown upon the neck of all restive and depraved natures.

Manufacturers seduce their work-people; the heads of workshops refuse to employ girls who will not sell themselves, soul and body, to them; masters corrupt their servants. Out of 5,083 lost women counted by Duchâtelet

at Paris in 1830, there were 285 domestic servants seduced, and afterwards dismissed by their employers. Commission-merchants, officers, students, deceive the poor girls from the province or the country, drag them to Paris, and leave them to perish. At all the great centres of industry, as at Rheims and at Lille, are societies organized to recruit the houses of sin in Paris.

This is well known to be true of all the large English towns; yet the law is powerless, and philanthropy interferes with no other result than that of driving these societies from one post to another.

Can women be expected to believe that the law would be powerless, if there were a sound public opinion behind it to sustain the law; if there were any *desire* on the part of the majority of men that it should be sustained? "Punish the young girl, if you will," continues Legouvé; "but punish also the man who has ruined her. She is already punished; punished by desertion; punished by disho-

nor; punished by remorse; punished by nine months of suffering; punished by the charge of a child to be reared. Let him, then, be struck in his turn. If not, it is no longer public modesty that you defend, as you pretend: it is the 'lord paramount,' the vilest of the rights of the 'seigneur.'"

In the laws which regard single women, we object, then, —

1. To the withholding of the elective franchise.

2. To the law's preference of males, and the issue of males, in the division of estates.

3. We object to the estimate of woman which the law sustains, which shuts her out from all public employment, for many branches of which she is better fitted than man.

4. We object to that estimate of woman's chastity, which makes its existence or non-existence of importance only as it affects the comfort or income of man.

We do not mean that the present *interpretation* of the common law does not *sometimes* show a more liberal estimate than the law it-

self, but rather that the existence of this law, unrepealed, *unchristianized*, is a forcible restraint upon the progress of society.

"A legal fiction," says Maine in his "Ancient Law," "signifies any assumption which conceals, or affects to conceal, the fact, that a rule of law has undergone alteration, its *letter* remaining unchanged, while its operation is modified." Such fictions may be useful in the infancy of society; but, like absurd formulas and embarrassing technicalities, they should give way before advancing common sense, before the diffusion of general intelligence and a common-school system, which is destined to qualify the humblest man for a full understanding of the law under which he lives.

We have now to consider the laws concerning *married women*. "On whatsoever branch of jurisprudence may lie the charge," says a late reviewer, "of working the heaviest sum of suffering, perhaps we shall not err in saying that the sharpest and cruellest pangs

are those which have been inflicted by our marriage-laws." In making our abstracts, we have need to avoid the absurd complications which confuse, not only simple-minded people, but lawyers themselves; and, to avoid any charge of ignorance or mistake, we will, as far as possible, adopt the language of Mrs. Bodichon's "Summary," which has stood for six years before the English public without impeachment.

We shall not discuss the question, as to what constitutes fitness for marriage in the eye of the law. In Scotland and in England, the consent of the parties is said to be the "essence of marriage;" but, alas! in how many cases is this "consent" taken for granted only, it being, in fact, the most baseless of legal fictions!

In commenting on the English law as compared with the Scotch, the reviewer adds, "A code so unsatisfactory, so unsettled, and by every alteration coming so palpably near to their own system, is one which Scotchmen

may be pardoned for declining further to consider, and which certainly they cannot be expected to recognize as the model to which their own should be conformed."

The rule of the English law was, at the institution of the Divorce Court, that the wife should have the same domicile as her husband, and that within English territory. A dishonest domicile barred her claim to divorce; and the husband who abandoned his wife, and fixed his residence abroad, effectually bound her to him. Justice has of late been done, because it was justice, heedless of the question of domicile.

There are in relation to this subject many provisions which wrong men and women alike; and, if there are any which especially wrong woman, they wrong man in a still higher degree through her. As an example of the former class, we may take the impossibility of release from a hopelessly insane partner, which makes the point of the wonderful story of "Jane Eyre."

Now, several things are quite evident to the eye of common sense:—

First, That the insane partner should be properly provided for during life, in the upper classes, by the sane partner; in the lower, by the parish or state.

Second, That as it is a sin against God and society to bring children into the world, born of a hopelessly insane parent; so, on the other hand, it is a sin against God and society to compel any man or woman to a life of hopeless celibacy.

Third, That, if the law does use this compulsion, it is responsible for the vicious connections that inevitably grow out of it; "*car les mauvaises lois produisent les mauvaises mœurs.*"* I should not turn aside from my

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* A curious instance of the immoral result of holding marriage sacramental, and indissoluble under all circumstances, comes within my personal experience while I am correcting these pages for the press, Oct. 11, 1861.

A young Catholic girl was divorced some years ago, immediately after marriage, on account of the bad conduct of her husband. She was received into the family of a brother-in-law,

main point to consider this, even for a moment, if it were not a striking instance of the want of common *sense* which afflicts the common *law*, and if I had not in my own experience been made aware of its frightful results. Within the limits of one small parish in the city of Toronto, Canada West, I found four instances in which men of the middle class had taken the right of divorce into their own hands, and were illegally married a second time. These persons, if not markedly religious, were respectable, orderly members of society, living properly in their families, supporting the wives

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in every way highly respectable. For the last two years, she has been courted by an officer in the navy of the United States; but nowhere in New England could a Catholic priest be found willing to marry them. The church still holds her responsible to her first vows. The officer honestly desired to marry her; but the natural result of her ignorance and perplexity followed. Expecting to become a mother, and rejected by her family, she came to me for advice. As the officer is a Protestant, I recommended that they should be married by a minister of that faith. She again consulted her priest, and was told that it was less sinful for her to remain in her present relation to her lover than to receive a sacrament from unholy hands; the priest ignoring utterly the *legal* protection and maintenance which she might thus receive.

they had left, and justifying the course they had taken. Two of them had left England on account of the hopeless insanity of their wives, and two on account of their hopeless immorality; the latter, cases in which the law would have granted a divorce, but at an expense which the husband could not pay. When I first heard this account of one person, I resented it as a slander, and went to console the afflicted wife, who was overwhelmed by the supposed rumor.

The husband met me at the door, with an honest, unabashed, but distressed face. "Don't deny it to her," said he. "I never committed but one sin, and that was when I kept it from her. She was a sweet, pious creature; and I feared she would not consent."

This man told me that he sent six hundred dollars yearly to his insane wife; that this kept her better than he could afford to keep himself and his family: "but," said he, "her station was always higher than mine."

In the other cases, the men had told their

stories, and the wives had consented to the arrangement. It is obvious, that, if a wife wished to withdraw from a husband in this manner, she could not do it, on account of property restrictions, and the common unfitness for self-support.*

In the marriage of a minor, the consent of the father, or of a guardian appointed by him, is necessary, but *not* that of the *mother:* another indication of the estimate the law puts upon woman, as compared with man; and this estimate, whenever and wherever it shows itself, has the effect to depress every woman's desire to fit herself to be a good citizen; and, when she fails in citizenship, man must fail also, as is ably shown by De Tocqueville.

"A hundred times in the course of my life,"

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* The only excuse for considering this point, in an essay pleading especially for women, is that the law bears unequally on the two sexes; pressing hardest on woman, on account of her pecuniary dependence, and general subordination to man.

A woman, every reader will understand, would find it impossible to free herself from her obligations, like the men referred to in the text; nor is it desirable that she should *free herself*, but that the law should free her.

he says, "I have seen weak men display public virtue because they had beside them wives who sustained them in this course, not by counselling this or that action in particular, but by exercising a fortifying influence on their views of duty and ambition. *Oftener still*, I have seen domestic influence operating to transform a man, naturally generous, noble, and unselfish, into a cowardly, vulgar, and ambitious self-seeker, who thought of his country's affairs only to see how they could be turned to his own private comfort or advancement; and this simply by daily contact with an honest woman, a faithful wife, a devoted mother, from whose mind the grand notion of public *duty* was entirely absent." *

A man and wife are one person in law: a *wife loses all her rights* as a single woman. Her husband is legally responsible for her acts: so she is said to live under his cover. A woman's body belongs to her husband.

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* National Rev. Apr. 1861, pp. 291, 292.

She is in his custody, and he can enforce his right by a writ of *habeas corpus*.

This last is one of the points in which the public feeling is so far before the law, that the latter could never be wholly enforced.

If a woman were unlawfully restrained of her liberty, her husband might take advantage of a *habeas corpus* to get possession of her; but it is not probable that any court, in England or this country, would *now* grant one to compel a wife to live with her husband against her will. Still, the estimate of the marriage relation which such laws sustain is so low, that one never can tell what will happen.

In the year 1858, a curious but *unintentional* satire on the judicial position of the husband occurred in one of the London courts. A delicate, much-abused woman, unmarried, but who had been, in her own phrase, "living for some time" with a man, brought an action against him for assault. Erysipelas had inflamed her wounds, and endangered her life.

"Had she died, sirrah," said the magistrate, addressing the criminal, "you must have taken your trial for murder. What have you to say in your defence?"

"I was in liquor, sir," pleaded the man. "I gave her some money to go to market. I told her to look sharp; but she was gone more than an hour, your worship: so, when she came back, I — I was in liquor, your honor."

The magistrate leaned over his desk, and, speaking in the most impressive manner, thus endeavored to cut short the defence: —

"This woman is not your slave, man. She is not accountable to you for every moment of her time. She is not," he continued with increasing fervor, but a growing embarrassment, — "she is not — she is not" —

He paused; but the throng of wretched women who crowded the court interpreted the pause aright, and were not likely to forget the lesson.

A suppressed titter ran through the court: for every married man knew that the words,

"she is not your wife," were those which had sprung naturally to the worthy magistrate's lips; and must have passed them, had not honest shame prevented.

The man then attempted to defend himself on the ground of jealousy: but this was instantly set aside; the unmistakable impression left on the mind of the court-room being, that the illegality of the relation was wholly in the woman's favor.

Women long ago understood this, and literary gossip gives us a late instance in a maiden aunt of Sir Charles Morgan. This woman, descended from Morgan the buccaneer, has more than once turned the scales of an Irish election. When she once arrested a robber on her own premises, and held him fast till the arrival of an officer, the gentlemen of the neighborhood advised her not to prosecute.

"It is well known," they argued, "that you refuse to employ a single man on your premises, and you may be marked out for the revenge of the gang."

"Justice is justice," she exclaimed in reply; "and the villain shall go hang!"

It was quite natural that we should find this woman telling Lady Caroline Lamb that no *man* should ever have legal rights over her, or her property. A wife's money, jewels, and clothes become absolutely her husband's; and he may dispose of them as he pleases, whether he and his wife live together or not. Her chattels real — that is, estates held for a term of years — and presentations of church livings become absolutely his; but, if she survive him, she may resume them.

Under such a common law as this, it is not surprising to find something needed which is called *equity*. Therefore, if a wife, on her marriage, gives all her property to her husband, the said *equity* (Heaven save the mark!) will, under certain circumstances, oblige him to make a settlement upon her. That is, when the wife has an interest in property which can only be reached by the husband through a court of equity, that court will aid him to

enjoy it, *only* on condition that such part as it thinks proper shall be settled on the wife.

The civil courts in England cannot compel a man to support his wife: *that* is left to the action of the church, and her own parish.

A husband has a freehold estate in his wife's lands as long as they both live.

Money earned by a married woman belongs absolutely to her husband.

By her husband's particular permission, she may make a will; but he may revoke his permission at any time before probate, — that is, before the will is exhibited and proved, — even if *after* the wife's death.

The custody of a child belongs to the father. The mother has no right of control. The father may dispose of it as he sees fit. If there be a legal separation, and no special order of the court, the custody of the children (except the nutriment of infants) belongs legally to the father.

Except the nutriment of infants! Here is a hint from the good God himself. Should we

not think, that the first time these words were written down, and men were compelled to see the natural dependence of the child upon the mother, — to detect the obvious laws of nurture, natural and spiritual, — the right of a good mother to her child would have made itself clear?

Yet, to this day, there are many States of our own Union where a mother can better authenticate her right to a negro slave than to the young daughter who is bone of her bone, and flesh of her flesh!

If the direct influence of Christianity did not, in some measure, modify the influence of the law in social life, there would be no such thing as a mother's exercising maternal authority over a son. No matter how wise, how old, how experienced, she may be, she never possesses, in the eye of the law, the dignity of a boy who has just attained his majority. Sufficiently instructed in legal maxims, he can always resist her, under the influence of the most besotted or unprincipled of fathers.

The word of a married woman is not binding in law, and persons who give her credit have no remedy against her.

The moral results of such a law are sufficiently obvious, not only in England, but in our own country. The statute-book does not, cannot, stand absolved, because public opinion in the present day abhors and contemns the woman who assists her husband to defraud his creditors, or takes refuge from her own debts behind this disgraceful cover. Yet, if the law gives her husband her property, it ought surely to hold *him* responsible for her debts. And this is what society calls *protection!*

As a wife is always presumed to be under the control of her husband (numerous instances to the contrary notwithstanding), she is not considered guilty of any crime which she commits in his presence.

When a woman has consented to a proposal of marriage, she cannot give away the smallest thing. If she do so without her betrothed husband's consent, the gift is illegal; and, af-

ter marriage, he may avoid it as a fraud on him: a strong temptation to any woman, one would think, to give away her all. You see here what estimate the law puts on property, as an inducement to marriage. This provision evidently grew out of the exigencies of the time, when marriage among the Anglo-Saxons was a *pure* matter of bargain.

As a protection against the common law, it is usual to have some settlement of property made upon the wife; and, in respect to *this* property, the courts of equity regard her as a single woman. Such settlements are very intricate, and should be made by an experienced lawyer.

The wife's property belonging to the husband, should her scissors, thimble, or petticoats, be stolen, the indictment must describe either of these articles as his!

Of divorce it is only necessary to say, that a divorce from the bonds of matrimony in England could be obtained only by act of Parliament; the right of investigation resting

with the House of Lords alone. Until the passage of the New Divorce Bill, only three such divorces had ever been granted to a woman's petition. The expense of the most ordinary bill was between three and four thousand dollars.

Nor need we dwell long on such laws as relate to *widows*. You may be interested to hear, that, *after* her husband's death, the widow recovers her right to her own clothes and jewels; also that the law does not compel her to bury him, that being the duty of his legal representative.

The indignation which we might naturally feel at the suggestion, that a wife *could* forsake her unburied dead, cools a little as the law goes on to state, that a husband *can*, of *course*, deprive a wife of all share in his personal estate. Very graciously, also, the widow is permitted to remain forty days in her husband's house, provided that she do not *remarry* within that time!

The result of a great deal of reading of a

great many law-books is only this, — that we are more firmly convinced than ever, that the most necessary reform is a simple erasure from the statute-book of whatever recognizes distinctions of sex. You should make woman, in the eye of the law, what she has always been in the eye of God, — a responsible human being; and make laws which such beings, male or female, can obey.

Even Christian, in his edition of Blackstone, said long ago, that there was no reason why civil rights should be refused to single women. In every respect but this, the single woman is independent; but let her take to herself a husband, and the law steps in to protect her, and she finds herself in a position of what is called "reasonable restraint." He may give her, says Blackstone, *moderate correction;* he may adopt any act of coercion that does not endanger life; he may beat her, but not violently. She may, by her labor, support him: but she cannot prevent him from bestowing her earnings, should he happen to die, upon those who have most wronged her

in life; his mistress, it may be, or his illegitimate children. Do you tell me that men of good feeling never act on such laws? Why, then, should men of good feeling be unwilling to wipe them from the statute-book?

For the most part, it is upon women of the lower class that the property-laws most hardly press. It was the suffering of this class, years ago, when the common law of Massachusetts was the same as that of England, that first roused my interest, and excited my indignation; but the story which the Hon. Mrs. Norton tell us shows that this class of women are not the *only* sufferers.

"*I* have learned the law piecemeal," she says, "by suffering all it could inflict. I forgave my husband's wickedness again and again, and found too late, that, in the eye of the law, practical Christianity, the forgiving unto seventy times seven, was a condonation which deprived me of all protection. My children were stolen from me, and put into the vilest custody, where one of them afterwards died for want of a mother's commonest care. My husband brought an action against his kindest friend, of whom he borrowed money and received office.

The jury listened with disgust, and gave their verdict against him. Then I was told that I might *write* for my bread, *or* my family might support me. My children were kept away, as their residence with me would make him liable for my debts.

"When my mother died, and left me, through my brother, a small income, he balanced the first payment by arbitrarily stopping his own allowance. For the last three years, I have not received a farthing from him. He retains all my personal property which was left in his home, the gifts of the royal family on my marriage, articles bought with my own earnings, and presents from Lord Melbourne. He receives from my trustees the income which my father bequeathed to me, which the 'non-existent' wife must resign to the 'existent' husband.

"I have also the power of earning by literature; but even this power, the gift of God, not the legacy of man, bears fruit only for him. Let him *subpœna* my publishers, and enjoy his triumph: he has shown me that I was not meant to write novels and tales, but to rouse the nation against such men as he, and such laws as they sustain. Let him eat the bread I earn; but it shall be bought with the price of his own exposure. If law will not listen to me, to literature I will devote my power, and secure for others what I have not been able to secure for myself."

No wonder that provident parents circumvent such a common law by a settlement before marriage. There is no chance for a partnership of gains or losses in England.

As we have already said, all sexual laws ought to be wiped off the statute-book; but the Hungarian law which was in force until 1849, when the German law was introduced into Hungary, is a comment on the absurdity of the English.

"No countrywoman of mine," said a proud sister of Kossuth, "would ever submit to such a marriage settlement as is common in England." In Hungary, inherited property could not be devised by will, and all unmarried women were considered minors. As soon as she married, a woman came of age, and into the full control of her estates. She could make a will, and sign deeds; and was not responsible for her husband's debts or the family expenses. As a widow, she was guardian of her children, and administrator on her husband's property. So long as she bore his name, she could exercise all his political rights. She could

vote in the county elections, and for deputies to the Diet. Trained up under such a law, what could the Hungarian woman think who found herself for the first time in the power of the English law?

Among the refugees whom the misfortunes of a leading Hungarian family drove to these shores was one woman of the highest natural gifts, the best social station. She was married to a man, handsome, accomplished, and reckless, but hardly patriotic enough to have need to fly with her. In the city of New York she opened a boarding-house of the highest class, by which she strove to support herself and her children. A fascinating hostess, a skilful manager, she succeeded, as might be expected. Soon her improvident husband followed her. At first, he did not attempt to annoy her; but, in time, some one was found cruel enough to expound to him the English common law. He stared, refused to believe; but finally entered his wife's house, seized her earnings, compelled her boarders to pay their

money into his hands, stripped her of all power to pay her rent and provide for her family, and then took himself off, enraptured, doubtless, with his brief experience of English and American liberty. Stripped of peace, position, and property, the injured wife had no longer courage to struggle. In underhand ways, to evade the unjust law, her personal friends settled her upon a little farm, where her shattered hopes found a short repose.

A few years ago, an American woman of captivating address gained great reputation in Paris as a milliner. She had a profligate husband, whom she invited to tea every Sunday, supplying him at that time with a sum for his weekly expenses. In an evil day, seduced by promises of high patronage, she went to London. She was very successful; but in a few months her husband surprised her, seized all she possessed, and, turned adrift on the streets, she went back to a country where the law would protect her industry. Marriage has been sought only to legalize a

theft, — to apply the words of Wendell Phillips, when "*union was robbery.*" A respectable servant, who had laid by a considerable sum, was sought in marriage by an apparently suitable person. On the day before the marriage, she put her bank-book into his hands. After the ceremony, he said to her, "I am not well in health, and do not feel equal to supporting a family: you had better go back to service." Naturally indignant, she responded, "Give me, then, my bank-book." — "I am too feeble to spare the money," he replied. She went back to service, and has never seen him since; but, of course, she has been often obliged to change her name and residence to protect herself from a long succession of extortions.

We see thus, that if a woman is able to conquer her fate, and to gain a livelihood in spite of a dissolute or incompetent husband, her home is not her own. Her husband's folly may, at any moment, deprive her children of bread.

I have said that there was no woman so

pitiable as an heiress. I said it advisedly. I thought of the long persecution she must bear from unwelcome suitors, — of all appreciation of her personality, ever so lovely or gifted or individual, sunk, as it must be, in the mire of her money.

Mrs. Reid says, justly, that this money is not so much her own as a perquisite attached to her person for the benefit of her *future husband;* the larger portion of which will eventually pass to his heirs, whether of her blood or not. If forced from ill treatment to leave his roof, the law will return her but a scanty pittance.

The nature of the law itself, and that estimate of woman on which it is based, are so identical, that we are compelled, as we turn over its pages, to treat these two points as one.

"For one-half the human race," said Mrs. Reid years ago, "the highest end of civilization is to *cling* like a weed upon a wall:" a curious instance of the power that the use of language has over a fact. There is nothing

captivating in clinging like a "weed to a wall;" but most women are satisfied to hang like the "vine about the oak."

It is a great misfortune, that this estimate of woman not only governs the courts in their decisions, but enters into and moulds all the movements of society. Such an estimate leads to constant contradictions; being, as it is, directly the opposite of the *fact* in so many cases, and of the Divine Will in all. In a book on woman recently published by a lawyer in England, I found a pithy paragraph to this point, concluding some observations on the comparative longevity of the sexes: "The wife," he says, "*fitly survives the husband*, both to take care of *his* premature infirmity, and to consummate the rearing of their offspring"! — a creative effort of the imagination which certainly entitles the writer to the laurels of the century.

One reason that the wages of women are kept down is, that, for the most part, women do not begin to labor early; do not devote

themselves *in youth* to any trade or profession, so as to compete with men who have. The plodding and steady habits of the man of business, he has acquired in his early years; and they are developed by the fact, that he is sole master of what he can earn, and can dispose of it as he thinks proper: but his wife has been brought up in no such school, — has no such motive to industry. Should she toil on for ever, she cannot possess what she acquires, nor lay out the smallest part of it, without another's leave. Even when man says to her with the sanction of the church and in the presence of God, "With all my worldly goods I thee endow," it means only that she is invited to enjoy, not possess them. This estimate of her rights, her position, and her ability, made manifest in every law-book, in the church itself, and obvious in every social form, discourages her whenever she would devote herself to any lucrative employment; so that it is only in desertion and despair, for the most part, that she becomes a laborer.

She is not always conscious of this discouragement. She quiets the Cerberus within by a three-times repeated "It is not proper," without pausing to analyze the conventional instinct. Here we find the real significance of the proverb, "A man of straw is worth a woman of gold;" for the "man of straw" is, at least, worth such money as he may hereafter earn, which the "woman of gold" is not.

We hear a great deal about laws for the *protection* of women; but we cannot urge too often the remark of James Davis in his Prize Essay of 1854, "that all early legislation for woman was founded, not on her own rights, but on those of her husband and children, and the *State over her.*"

When one remembers that the "seat of the law is the bosom of God," it strikes one strangely, that moral consequences to character have so little to do with what one may call "sexual legislation."

In speaking of the frequenting of disreputable houses, neither Montesquieu, nor Dr.

Wood in his "History of Civil Law," finds a single word to say as to the moral degradation of the race, or the special degradation of woman involved in it, but both grow eloquent concerning the ruin of the State. It requires a sounder mode of thinking than most men possess to see the relation between the ruin of the State and their own bad habits, the loss of one man's purity. Thus the laws concerning adultery, or divorce for that cause, bring the heaviest penalties, social and legal, upon the head of an offending woman. The legal excuse for this positive injustice is the safety of the family and the State, — the great crime of imposing upon a family false representatives of its name and honor; but a woman's brain and conscience are too clear to rest in this masculine decision.

If a man cannot bring a false representative into *his own family*, he can carry it into his neighbor's, when his profligate life violates the social compact; and, as to his own family, his vices may injure it far more than the infi-

delity of his wife. At the worst, her misconduct will only bring into the shelter of his home a child who grows up protected socially by her fraud; but, if *he* choose to "spend his substance in riotous living," his wife and children may, while the law gives him exclusive right to their common property, be deserted, or driven from their homes, to make room for those who are the companions of his guilt. It is quite possible, it will be seen, therefore, to show another side to this matter, in no better light than that of expediency. One canton of Switzerland (the Canton Glarus) possesses laws in regard to such matters, in marked contrast to those of the whole civilized world. The consequence is, that the falsehood and crime so common elsewhere are here unknown.*

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* "A man who is guilty of adultery is branded by public opinion as a forger or bigamist is elsewhere, and is not eligible to public office during the whole of his life; which, under such a government, is the greatest punishment that can be inflicted. A man who breaks his promise of betrothal, or who in any way betrays a woman to mortification and shame, is heaped with the same scorn that women receive elsewhere. The woman who is betrayed is censured; but the man is henceforth an outcast." — *Cottages of the Alps*, p. 288.

"Perhaps it would be just," says Poynter on "Marriage and Divorce," in 1824, — "*perhaps* it would be just, that where the husband violates the matrimonial compact, and the property originally belonged to the wife, he should give back the whole of it. Courts, however, have never gone that length."

One would think, nevertheless, that husbands themselves might go that length, and that men who aspire to the credit of decency would be ashamed to eat the bread of her they have betrayed and wounded. How is it that they have deceived themselves from the beginning, and have fancied that God requires of woman a fidelity and purity that was not of the smallest consequence to themselves?

In the late debate in Parliament on the New Divorce Bill, when a member objected to the introduction of a clause equalizing the relief of divorce to both sexes, he asked, "If this clause were adopted, I should like to know how many married men there would be in this

house?" He was answered by shouts of laughter.

Would these men have laughed, think you, if they had been asked how many *pure wives* could be found in their family circles? and, if *not*, would it have been because they were capable of estimating the value of womanly virtue? No: *he* cannot estimate that who has never known the worth of manly purity. The spectres of illegitimacy and civil ruin are what would stare them in the face, and turn their very lips so white.

In France, says the "Westminster Review," fidelity on the part of the husband is considered a sort of imbecility. What is thought of it in England? Does this scene in Parliament, printed for all our girls to read, suggest any higher view?

"The frequenting of disreputable places," says Davis, "was once an indictable offence in a *man;* but that is now obsolete." Obsolete? and why? A lawyer once told me, that the most obscene publication he had ever read

was a book upon divorce. I can well believe it. I thought I knew how corrupt modern society could be; but I did not know how unsoundness had darted to its very core, till I began to read law, and to understand the estimate which that puts upon woman and chastity.

When I think of these things, I wonder that this platform is not thronged with the ghosts of dead and ruined women, crowding here to second my appeal to beseech you to grant human justice, to require human virtue! And all this sin is sheltered under the plea of protection! "How many delicious morsels I should miss if it were not for *thy* care, O most excellent jackal!"

"Lawyers," says Johnson in 1777, — "lawyers often pay women the high compliment of supposing them proof against all temptations combined."

Certainly, whatever the *lawyers* may do, the *law itself* confidently expects of them a superhuman strength. It gives them no defence

but immaculateness. It offers them no shelter but God's temple, no robe but spotless ermine; and then, turning the page, it says, "A *husband* is expected to be vigilant, and so prevent his own dishonor:" as if his *vigilance* and quick-wittedness could save the woman whom his *love* had not blessed.

Ah! these lawyers are but blind guides, after all. Centuries of discomfiture and defeat have not sufficed to teach them how little security is to be found in suspicion and scepticism. If I do not want my groceries stolen, I must leave my storeroom open. The very servant who would not scruple to pick my locks will know better than to pick that of her own heart. "A thorough-bred woman," says Mrs. Reid, "is good only so far as her husband suggests and allows;" and, so long as *this* is the standard, woman's duplicity may well match man's utmost expectation, and there is not a privilege of his open vice that she will not secure by stealth.

There was a time when all the women at

the court of France blushed for one of their number who unluckily made use of a hard word in a *proper* place. In like manner, the woman who reads law blushes to find herself even tolerably sincere and modest. It is not expected of her. Why has she never done any of the bad things the law so confidently predicts?

All thinking people must see how easily we turn from the consolidated law of ages, with its false views, its untrue estimate of woman and duty, to the question of the right of suffrage.

In 1848 and 1850, we used to hear a great deal of three objections to conferring this right upon women: —

1st, Its incompatibility with household care and the duties of maternity.

2d, Its hardening effect on the character; politics not being fit for woman.

3d, The inexpediency of increasing competition in the already crowded fields of labor and office.

To these three points we gave short and summary answers: —

1st, There are a great many women who will never be mothers and housekeepers; and, if there were not, suffrage is no more incompatible with maternity and housekeeping than it is with mercantile life and the club-room.

2d, If it hardens women, it will harden men; and the politics which are not fit for her are not fit for him, nor will they become so till her presence gives men a motive to purify them.

3d, At the worst, competition could only go so far, that a man *and* a woman would earn as little together as the man now does alone. This would be better than the present condition of things; for they would then be equal partners, and no longer master and slave. Both would work, and neither need pine.

These answers, whether logical or not, have practically silenced the objections. We hear no more of *this* nonsense. But, on the other hand, a respectable daily says, "As to the abstract right of a woman to vote because she is a human being and pays taxes, there is no such abstract right in any human being, male or female: the extent of the elective franchise is, and must ever be, limited by considerations of expediency."

Then a distinguished review goes on to say, "that while the question of suffrage stands where it now does, so unsettled that every Congress and Parliament discuss it anew, we are glad that any thing should prevent the discussion as to conferring on woman a duty, the grounds of which are very vague and undetermined so far as regards men;" and a critic of Rosa Bonheur's magnificent pictures advises the "sad sisterhood of women's-rights advocates to visit the exhibition, and sigh to think how much one silent woman's hand outvalues for their cause the pathos and the jeers of their unlovely platform."

Such remarks as these are easily met. To the first objector, who declares, although the professed advocate of a republican government, that *there is no such thing* as any abstract right to vote, we reply, that in this particular discussion we don't care about *abstract rights:* what we want is our *own share* of the tangible acknowledged right which human governments confer. If in England this right depends on

a property qualification, then we claim that there the property qualification shall endow woman as well as man with the right of suffrage. If in America it depends upon an inalienable right to life, liberty, and the pursuit of happiness, then we demand that our government recognize woman as so endowed, and receive her vote.

To the reviewer we say also, If the grounds of suffrage are vague and undetermined in *theory*, they may remain so, so far as our interference is concerned. What we ask to share is the steady right to vote, which has been actually granted, and never disputed, since our government was founded; and sufficiently pressed, we might add, that, if there is ever any chance of limiting the right of suffrage, we shall do all we can to secure its dependence on a certain amount of education, in preference to a certain amount of wealth.

As to the art critic, we thank him for calling us the "sad sisterhood." We should be sorry to be otherwise, when pleading for wo-

men *before* men; sorry to find matter for jesting in those purlieus of St. Giles and Five Points and the Black Sea, beating up remorselessly against these very doors, which lie at the very heart of our effort. As to the matter of going to see the Horse Fair and the Highland Cattle, it will probably be found to be a fact, that, in every city where those great pictures have been exhibited, "*women's-rights women*" have been their *earliest* visitors; and, standing before the canvas, have thanked God, with an earnestness the art critic never dreamt of, for that silent woman's hand, that glorious woman's life. It was not necessary for him to remind us of what Solomon had said so much better three thousand years ago; namely, that "speech is silvern, and silence is golden." Nathless, silver is still current in all markets; and, God willing, we are not ashamed to use it.

We intend to claim, in words, the right of suffrage; and why?

Turning from that wretched estimate of

woman, and of man's duty toward woman, which the law-books have just offered us, we claim the right of suffrage, because only through its possession can women protect themselves; only through its exercise can both sexes have equality of right and power before the law. Whenever this happened, character would get its legitimate influence; and it is just possible that men might become rational and virtuous in private, if association with women compelled them to *seem so* in public.

It is noticeable, that every man disclaims at his own hearth, and in the presence of women, whatever there is of disgraceful appertaining to political or other public meetings. *Somebody* must be responsible for these things; and yet, if we are to believe witnesses, nobody ever does them. The bare fact of association must take all the blame.

The laws already existing prove conclusively to woman herself, that she has never had a real representative. What she seeks

is to utter her own convictions, so that they shall redeem and save, not merely her own sex, but the race.

That the right of suffrage would be a protection to women, we see from this fact, that it would at once put an end to three classes of laws: —

I. Those that protect her from violence.

II. Those made to protect her from fraud.

III. Those that protect society from the passions of both sexes.

The moment woman began to exercise this right, I think we should see moral significance streaming from every statute. We should no longer hear that seduction was to be sued as "loss of service:" it would become loss of honor to *more* than one. We should no longer hear that consent or temptation excused it: we should find that God demanded chastity of both sexes, and had made man the guardian of his own virtue. We should find, that, if its punishment admitted of degrees, it should be *heaviest* where a man committed it in defiance or abuse of a positive trust.

Let us look at a single decision in the light of these principles. Let us take the case of Harris *versus* Butler, reported in the notes to Davis's Prize Essay.

A man named Harris had apprenticed his daughter to a milliner named Butler, paying as an entrance-fee a sum equivalent to a hundred and fifty dollars. After a short time, the girl was seduced by her mistress's husband. She became seriously ill, and was returned to her father, who lost not only his hundred and fifty dollars, but all the benefits of her apprenticeship, and was obliged to provide her with board, medicine, and nursing.

Why the father became liable for the care of his child under such circumstances does not appear. Common sense would suggest that the court might have required this at the hands of the Butlers; but, unfortunately, law has very little to do with common sense.

The father brought an action against Butler: but the defence urged, that he could only sue for "loss of service;" that her "services"

were not his after she was apprenticed to Mrs. Butler; that Mrs. Butler and her husband were "one person in law;" and that, if Butler chose to deprive himself of her services for his own ends, the law had no remonstrance to make, no redress to afford.

The prosecution urged, that the "care of morals" was one of the duties involved in the very system of apprenticeship; but the court denied the claim, unless it were distinctly set forth on the articles signed.

This is but one case out of hundreds accessible to you all. The moment woman becomes a law-maker, such records will be wiped out of your life. They may make a certain sort of show in your law-books; but what have the unbending laws of God to do with this "one person in law," this plea for "loss of service"? At the eternal bar, no man will dare to echo that plea, no judge rehearse that verdict. Such law rests not in the "bosom of God;" its voice chimes not in keeping with the harmony of his countless spheres.

You object to seeing women in Parliament. English lords tell us that delicate matters have to be discussed there, with which women would hardly care to meddle. The natural growth of society opens the area of all proprieties. Delicate matters come to be discussed in most households; and it is reasonable to suppose that they would be more delicately and rationally discussed if they were sometimes *publicly* met. It is my opinion, that no subject is fit for discussion at all that cannot be discussed between men and women. It is separating the sexes in such cases, that opens the way to indecency. All great themes of human thought and human virtue, men and women ought to be trained to consider seriously together; and where better than in the Congress or the Parliament? Think only of the debate which I have quoted on the New Divorce Bill! Could such a scene have taken place in the presence of women? Recur to the trial of Queen Caroline; or to that of the Duke of York, when accused of conniving at

the corrupt sale of military commissions by his mistress, Mrs. Clarke.

Under date of Feb. 16, 1809, Freemantle writes: "The scene which is going on in the House of Commons is so disgusting, and at the same time so alarming, that I hardly know how to describe it to you. Of course, while this ferment lasts (and God knows when it is to end), no attention will be paid to the business of the country."

In these instances, high-bred men showed a taste for low scandal; battening day after day on the same loathsome details, which the presence of a single woman must have checked. Here was a woman, too, this very Mrs. Clarke, somewhat debased and hardened, who had never a seat in Parliament, who had never dreamed of exercising the right of suffrage, yet was quite equal, as the evidence showed, to any political venality, striving in her way to outdo the very jobbers of Downing Street itself! Why *should* elections be scenes of tumult, or parliaments free fields for imbecile

improprieties? Why should not a peeress feel herself as properly placed among her peers as the Queen seated at her Council?

We are not likely to withdraw our claim while it is sustained by such a man as John Stuart Mill, who, in his late essay on "Political Representation," advises this extension of the suffrage: "All householders, without distinction of sex," he says, "might be adopted into the constituency, on proving to the registrar's officer that they have fifty pounds a year, and can read, write, and calculate."

"The almost despotic power of husbands over wives," Mr. Mill adds in his "Essay on Liberty," "needs not to be enlarged upon here, because nothing more is needed for the complete removal of the evil than that wives should have the same rights, and should receive the protection of the law in the same manner, as all other persons; and because, on this subject, the defenders of established injustice do not avail themselves of the plea of liberty, but stand forth openly as the champions of power."

The dedication of this "Essay on Liberty" ought to be preserved in these pages; for it is full of historic significance: —

"To the beloved and deplored memory of her who was the inspirer, and in part the author, of all that has been best in my writings; the friend and wife, whose exalted sense of truth and right was my strongest incitement, and whose approbation was my chief reward, — I dedicate this volume.

"Like all that I have written for many years, it belongs as much to her as to me; but the work, as it stands, has had, in a very insufficient degree, the inestimable advantage of her revision; some of the most important portions having been reserved for a more careful re-examination, which they are now never destined to receive. Were I but capable of interpreting to the world one-half the great thoughts and noble feelings which are buried in her grave, I should be the medium of a greater benefit to it than is ever likely to arise from any thing that I can write, unprompted and unassisted by her all but unrivalled wisdom."

I said that this dedication ought, for many reasons, to be preserved in these pages. What is better fitted than such a tribute to check the jeering scepticism of the crowd as to the

ability and purity of the sex? What could lay a better foundation for a better estimate on the part of the law? Necker, in his report to the French Government, publicly awarded to his wife the credit of the recent retrenchment in the expenses of the Government; Bowditch dedicated his translation of the "Mécanique Celeste" to the wife who aided him to prepare, and by her self-denial opened a way for him to publish it: but where in the records of the past shall we find such a tribute offered by such a man, as honorable in itself to the first political economist of our time as it is a gracious adornment to the name of the woman he loved? Does it not promise in itself the dawning of a brighter future for woman, when no "sad sisterhood" shall be needed either to proclaim woman's rights or redress her wrongs?*

* In reprinting for his collected works Mrs. Mill's article on "The Enfranchisement of Women," Mr. Mill more lately says, "All the more recent of these papers were the joint production of myself, and one whose loss, even in a merely intellectual point of view, can never be repaired or alleviated. But the

About two years since (1858), the Stockholm "Aftonblad," a Swedish newspaper, stated that "the authorities of the old university-town of Upsal had granted the right

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following essay is hers in a peculiar sense; my share in it being little more than that of editor or amanuensis. Its authorship having been known at the time, and publicly attributed to her, it is proper to state, that she never regarded it as a complete discussion of the subject which it treats of; and, highly as I estimate it, I would rather it remained unacknowledged, than that it should be read with the idea, that even the faintest image can be found in it of a mind and heart, which, in their union of the rarest, and what are deemed the most conflicting excellences, were unparalleled in any human being that I have known or read of. While she was the light, life, and grace of every society in which she took part, the foundation of her character was a deep seriousness, resulting from the combination of the strongest and most sensitive feelings with the highest principles. All that excites admiration, when found separately, in others, seemed brought together in her, — a conscience at once healthy and tender; a generosity bounded only by a sense of justice, which often forgot its own claims, but never those of others; a heart so large and loving, that whoever was capable of making the smallest return of sympathy always received tenfold; and, in the intellectual department, a vigor and truth of imagination, a delicacy of perception, an accuracy and nicety of observation, only equalled by her profundity of speculative thought, and by a practical judgment and discernment next to infallible. So elevated was the general level of her faculties, that the highest poetry, philosophy, oratory, or art, seemed trivial by the side of her, and equal only to expressing some part of her mind; and there is no one of these modes of manifestation in which she could not easily have taken the highest rank, had not her incli-

of suffrage to fifty women owning real estate, and to thirty-one doing business on their own account. The representative that their votes assisted in electing was to sit in the House of Burgesses."

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nation led her for the most part to content herself with being the inspirer, prompter, and unavowed co-adjutor, of others.

"The present paper was written to promote a cause which she had deeply at heart; and, though appealing only to the severest reason, was meant for the general reader. The question, in her opinion, was in a stage in which no treatment but the most calmly argumentative could be useful; while many of the strongest arguments were necessarily omitted, as being unsuited for popular effect. Had she lived to write out all her thoughts on this great question, she would have produced something as far transcending in profundity the present essay, as, had she not placed a rigid restraint on her feelings, she would have excelled it in fervid eloquence.

"Yet nothing that even she could have written on any single subject would have given an adequate idea of the depth and compass of her mind. As, during life, she detected, before any one else had seemed to perceive them, those changes of time and circumstances, which, ten or twelve years later, became subjects of general remark; so I venture to prophesy, that, if mankind continue to improve, their spiritual history for ages to come will be the progressive working out of her thoughts, and the realization of her conceptions."

Such tributes, borne by noble men to noble women, are so frequently hidden away in the heavy volumes which lie out of ordinary reach, that I take pleasure in bringing them to support my own plea; and I only wish I could as easily add to that in the text the charming acknowledgments of Alexis de Tocqueville to his wife.

This is the way the matter is to begin. By and by, the interests of labor and trade will force the authorities of Bristol and Manchester, Newcastle and Plymouth, to do the same thing; and, after women have gone on for some twenty years electing members of Parliament, nobody will be surprised to find some women sitting in that body. "But," objects somebody, "if that ever happens, we shall have women on juries, women pleading at the bar, women as attorneys, and so on." And this is exactly what we want. Women are very much *needed* on juries, and *female* criminals will never be tried by their peers until they are there. It is very seldom that a criminal case in which women are implicated is brought forward, when women could not be of immense service in clearing up evidence, and showing to the male jurors on the panel the absurdity or impossibility of some of the statements. The recent instance of Miss Shedden, who took up, at a moment's notice, a case which five well-feed lawyers of distinction declared

themselves unprepared to defend, might be quoted in confirmation of our view. Mr. Russell said at the Liverpool Assizes lately, in a case which involved some peculiar evidence, "The evidence of women is, in some respects, superior to that of men. Their power of judging of minute details is better; and when there are more than two facts, and something be wanting, their intuitions supply the deficiency." And precisely the qualities which fit them to give evidence, fit them to sift and test it. Women often have occasion to smile, sometimes sadly, sometimes mischievously, at the verdicts passed upon their own sex. If women were to enter into the practice of law, or become law-makers, an immense change would take place in all that relates to it. Absurd technicalities would be swept off its papers. One hundred words would no longer do duty for one. Simple, common-sense forms of expression would take the place of obsolete Latin and Norman-French. Daylight would be let into indictments, and flaws would soon be hard to find. No woman ever existed,

whose patience would stand, in cases where meaning and law are evident, the absurd delays of chancery courts, or the still absurder "filing of objections," or "defining of terms," with which lawyers amuse a jury, and which Sir Leicester Dedlock, we are told, considered as the bulwarks of the English Constitution. This impatience of woman might not be very valuable, if she were to legislate alone; but, controlled by man's conservative caution, it will be of the greatest service.

We are perpetually met by the opposition extended to *any thing* that is new. It ought to be our object, therefore, to show, that for woman to claim and possess the right of suffrage is by no means a new thing. It is easy to show from the records of most nations, that women held and exercised political power so long as power was supposed to inhere *chiefly* in property, and so long as women, either single or in association, possessed property not represented by men. Thus the suppression of religious houses in England put an end to the representation of abbesses. "Truly, we

think more of money than of love," said one of the St. Simoniens: "we have more consideration for bags of dollars than human dignity. We emancipate women in proportion as they are property-holders; but, in proportion as they are women, our laws declare them inferior to us." It was only when the republican idea had crept to a certain extent into monarchical governments themselves, that women gradually dropped a recognized public influence which had depended on rank and wealth. What men have to do is, not to reconcile themselves to a woman's right to vote, — a right acknowledged hundreds of years ago, which is still covertly acknowledged when woman means property, — but to reconcile themselves to the idea that woman is a human being, and that *humanity* has a right to vote. Wherever governments decide that every individual has a right to life, liberty, and the pursuit of happiness, they must admit the right of the individual woman to vote, or deny the fact of her humanity. There is the dilemma. In support

of this statement, I should have shown you, that in France, as early as the reign of Louis XIV., the political rights of property were respected in the persons of women. At the present day, the remains of the old feudal and communal system still secure a kind of political influence to certain women in the provinces, and often confer upon their husbands a right of franchise. In the reign of Louis XIV., the women who hawked and vended fish took up the business of the "insolvent fishmongers," and managed so well, that they acquired wealth, married their children into the first families, and finally became an estate of the realm.

"Les Dames de la Halle," or "Dames of the Market," as they are called, have a corporate existence; and, if corporations *have* no *souls*, they ordinarily possess *franchises!* They have their queen, their laws, and a language peculiar to themselves. They take part in revolutions, and send deputations to the foot of the throne. Nor am I alluding now to long-

past feudal or re-actionary crises. Louis Napoleon treats *them* as civilly as he does the *clergy*. When he was married, and when the young prince was born, they went to the Tuileries in their court-dress. Their princesses — and we are told that their blood royal claims the higher privilege of beauty also — their princesses took the front rank in the procession, and offered bouquets to their imperial majesties. In response, Louis Napoleon gave to them what he gives to all corporations, — a very diplomatic speech.

I have told you what was granted at Upsal in 1858. It is a curious fact, that, just at the moment when this question of suffrage was first agitated by the women of the United States assembled in convention at Seneca Falls in 1848, Pauline Roland and Madame Moniot publicly claimed their civil rights in Paris. Pauline went herself to the ballot, and, when her vote was refused, published a protest after the fashion of our tax-payers. Very absurd English society found woman's first

demand for the suffrage; yet what Englishmen refuse contemptuously to *give to* woman, certain men of the mean sort, yet calling themselves respectable, have not been ashamed in that very country to *borrow of* her. Even "Blackwood" helps out our argument, when it says, in November, 1854, "I believe, Eusebius, I speak of a notorious fact, when I say, that it is less than a century since, for election purposes, parties were unblushingly married in cases where *women* conveyed a right of freedom, a political franchise to their husbands, and parted, after the election, by shaking hands over a tombstone, as an act of dissolution of the contract, under cover of the words, 'Until death do us part.'"* The men

* In an article in the "Edinburgh Weekly Journal" for Jan. 10, 1827, written by Sir Walter Scott, the following allusion is made to abuses which had crept into the army in the middle of the eighteenth century: —

"To sum up this catalogue of abuses, *commissions* were in some instances bestowed upon *young ladies*, when pensions could not be had. We know ourselves one fair dame who drew the pay of a captain in the —— dragoons, and was probably not much less fit for the service than some who at that period actually did duty."

who looked calmly on this profane and absurd fraud may well dread the moral influence of woman on elections. As to the historical argument for England, ladies of birth and quality, we are told, sat in council with the Saxon Witas. The Abbess Hilda *presided* in an ecclesiastical council. "In Wightfred's great council at Benconceld in 694," says Gurdon in his "Antiquities of Parliament," "the abbesses sat and deliberated; and five of them signed decrees of that council, with the king and bishops:" and that illuminated prebendary of Sarum, old Thomas Fuller, thus further chronicles the same event:—

"A great council (for so it is titled) was held at Becanceld (supposed to be Beckingham in Kent) by Withred, King of Kent, and Bertuald, Archbishop of Britain, so called therein (understand, him of Canterbury), wherein many things were concluded in favor of the church. Five Kentish abbesses — namely, Mildred, Ethelred, Æte, Wilnolde, Heresinde — were not only present, but subscribed their names and crosses to the constitutions concluded therein; and we may observe, that their subscriptions are not only placed before and

above all presbyters, but also above that of Botred, a bishop present in this great council. It seems it was the courtesy of England to allow the upper hand to the weaker sex, as in their sitting, so in their subscription."

King Edgar's charter to the Abbey of Crowland, in 961, was with consent of the nobles and *abbesses* who signed that charter. In Henry the Third's and King Edward the First's time, four abbesses were summoned to Parliament; namely, of Shaftesbury, of Winchester, of Berking, and of Wilton. In the thirty-fifth year of Edward the Third, were summoned — by writ of Parliament, to sit in person or by their proxies — Mary, Countess of Norfolk; Alienor, Countess of Ormond; Anna Despenser; Philippa, Countess of March; Johanna Fitzwater; Agneta, Countess of Pembroke; Mary de St. Paul; Mary de Roos; Matilda, Countess of Oxford; Catharine, Countess of Athol.

As to the offices which women can hold in Great Britain, we have already quoted something from Mr. Higginson, in speaking of the

prohibitions of the law. Lady Packington's estate has probably, by this time, passed into male hands: so *she* elects no more members of Parliament. Those who have read the plea of Lady Alice Lille, when she was forbidden to speak by attorney, will find no great difficulty in imagining that a woman could manage a government debate.

Such women as have purchased or inherited East-India stock have always had the privilege of voting at the meetings of the company, and so have assisted to govern that unhappy country. In the provincial English towns, if I may judge from the indirect testimony of novels and newspapers, women appear to attend all stockholders' meetings; certainly those held by the banks. In the United States, they are notified, *but not expected to attend:* a cool kind of insult, which I wish some women might astonish them by retaliating. If any bank were established by, or had a majority of, female stockholders, it would be quite easy to notify men, without expecting *them* to attend;

and the alternative of trusting their own property to the judgment of *women* might possibly open the eyes of men to the absurdity of the present custom.

As we withdraw our eyes from the past, it is natural to inquire, What late changes have taken place in Great Britain? and what is the strength of the reform tendency? I have often said, yet I must repeat it here, that nothing has ever promised such noble usefulness for woman, nothing has ever occurred to change the popular estimate of her character, in the same degree as the formation of that *out-of-door Parliament*, — the Association for the Advancement of Social Science. It offers a position of entire equality to woman. It encourages her to express herself in the presence and with the sympathy of the wisest men, and gives her an opportunity to speak to the actual Parliament through her own influence exerted on its best members. It has been well said (I think, by Mrs. Mill), that the very best opportunities of education will be opened

to woman in vain, until she is practically invited to turn them to account. Here, in this association, is her first practical invitation in Great Britain. God grant that she may understand the responsibility it involves, and bear it well! But the formation of this association in 1857 was preceded by other steps. It was on the 13th of February, 1851, that a petition of women, agreed to by a public meeting at Sheffield, and claiming the elective franchise, was laid before the House of Lords by the Earl of Carlisle; and, in July of the same year, Mrs. Mill's admirable article on the "Enfranchisement of Women," now become commonplace on account of the extensive and thorough use that has been made of it, appeared in the "Westminster."

The examination of Florence Nightingale before a commission of inquiry bore witness no less to the surpassing ability of the woman than to the increasing value of such ability to all governments. In connection with it, one could not but smile at the distress felt by cer-

tain journals over a single mistake on the part of the lady as to the proper title of a subordinate officer.

In the month of March, 1856, the "London Times" published a petition to both Houses of Parliament in behalf of an amendment of the English property-laws. This petition was signed by many women whose names are well known and dear to us, — by the late Anna Jameson, so well known to the world as an accomplished critic in literature and art; by the wife and sister of the poet Browning, — Elizabeth Browning herself, the first poet among women, so far; by Bessie Raynor Parkes and Matilda Hayes, the editors of the "English-woman's Journal, the establishment of which of itself constitutes an era in the progress of human thought; by Barbara Bodichon, the well-known artist; by Harriet Martineau, distinguished in political economy; by Mary Howitt, the womanly story-teller and ballad-maker; and Mrs. Gaskell, the author of "Mary Barton." The petition was supported in the

House of Lords by Lord Brougham, and in the House of Commons by Sir Erskine Perry.

After the close of the session in April, 1857, a dinner was offered to Lord Brougham in acknowledgment of the distinguished ardor with which he had pressed this bill, — the Married Woman's Property Act of 1857. This bill did not apply to Ireland or Scotland, nor to pre-existing contracts; that is, to marriages solemnized before the first day of January, 1858. It was not passed; but a clause for the protection of the earnings and savings of married women was introduced into the New Divorce Bill, and has already proved a blessing to hundreds. This clause, however, operates *only* in cases of desertion, — a charge easily evaded.*

* "In the little brown duodecimo which contains the jottings of 'that famous lawyer, William Tothill, Esquire,' there is the following entry, of the date of James I.: —

"'Fleshward *contra* Jackson. Money given to a *feme covert* for her maintenance, because her husband is an unthrift. The husband pretends the money to be his; but the court ordered the money to be at her own disposal." — *London Quarterly*, July, 1861. A very ancient germ of "A Married Woman's Property Law."

The New Divorce Bill passed in July, 1858: and, since then, the Divorce and Matrimonial Causes, Act Amendment Bill, passed in July, 1858; and the Divorce Court Bill in August, 1859; both of these last having been made necessary by the change in the law. It was in April, 1858, that Mr. Buckle delivered his lecture on "Civilization;" an important contribution to that estimate of woman, which is beginning to act powerfully on all legislation. The Law-Amendment Society also published a report, urging a thorough reform of the law.

In connection with the reforms effected in the mother-country, it may be well to state, that similar reforms are being effected in Canada. Legislators there turn for their precedents to England; but there can be no doubt that the agitation in the United States largely contributes towards these changes.

A Married Woman's Property Act passed the Council in May, 1858; but as these changes are still in progress, and a progress much in-

terrupted by political fluctuations, it seems hardly worth while to enter into their details.

In one respect, the statutes of Canada are marked by a singular inconsistency. They record the only instance, within my knowledge, in which a government distinctly *forbids* women to vote; and almost the only instance of a government *conferring* that right, even to a limited extent. In the twelfth year of Victoria, the Canadian Government passed a statute in these words: "No woman is or *shall be* entitled to vote at any election for any electoral division whatever." What spasm of autocratic terror, what momentary rebellion against their liege lady, inspired this act, we are left uninformed. For the most part, in all countries, women wait to be told that they *may vote;* and their ineligibility is decided by the introduction of the word "male," or the popular construction of the word "citizen," which, it is quite evident, does not mean a woman. But it was in Canada also that a distinct electoral privilege was conferred by intention in 1850;

an intention, however, which indicated no enlargement of views, nor desire of reform, nor recognition of woman at her human value: it was simply an intention on the part of the Protestants to secure a little more political power. Not *humane*, then, but interested motives, dictated the omission of the word "male" in that section of the statutes which provides for the election of school trustees. It was desired thus to bring the influence of female property-holders and Protestants to check the Roman-Catholic demand for separate schools. Three things made it easy for Canadian women to vote under this provision: —

1st, The great degree of individual independence seen everywhere in English-born women, as compared with American.

2d, The respect felt, in all countries where distinctions of rank exist, for the mere property-holder.

3d, The political excitement of the local Protestant Church, which sustained them to the uttermost.

They have voted for ten years; and a four-years' residence among them was sufficient to convince me, that no greater derangement to society would occur if the full right were conferred. In connection with English government and English colonies, I ought to speak of the government of Pitcairn's Island. It was the mutinous crew of her majesty's ship "Bounty" that settled Pitcairn's Island. Adams, the boatswain, was the father of the little community, and drew up the simple code of laws by which the islanders are still governed. On Christmas Day, a magistrate and councillor are elected for the ensuing year; men and women over sixteen being allowed to vote. The women assist in the cultivation of the ground, and take no inconsiderable share in the municipal debates. The fate of this experiment is not yet decided; so I have thought it worth while to preserve the statement. You will have already seen, that in England, as elsewhere, so long as the right of suffrage depended upon possession of property, upon

hard pieces of eight, or broad acres of land, there was no dispute of woman's privilege. It is no new thing for woman to vote in England: it is a very *old* thing. It is only a question, whether she shall vote upon the ground of her humanity.

III.

THE UNITED-STATES LAW, AND SOME THOUGHTS ON HUMAN RIGHTS.

"Men often think to bring about great results by violent and unprepared effort; but it is only in fair and forecast order, 'as the earth bringeth forth her bud,' that righteousness and praise may spring forth before the nations." — JOHN RUSKIN.

IN passing last to the United States of America, one is tempted to ask, with Anna Brewster when rehearsing the hardships of Helvetian women, "Can it be true, as the advocates of despotic government often say, that under no government are women so harshly treated, so stripped of all independent rights, as under a republic? In republican Helvetia, the Vaudois peasant woman leaves all household care, to stand, spring, summer, and autumn, in her vineyard; but not a bunch of grapes can she gather for the market, without her husband's leave. *He* may

have loitered and smoked through every sunny day, while *she* has dug and dressed and watered; but she may not sell one grape to buy bread for her children."

And this is a picturesque statement of the English common law, on which the common law of the United States still rests in the main, and on which it has rested entirely until within the last ten years.

A few passages from Chancellor Kent will indicate, —

I. The estimate of woman formed by this law, and the property-laws, built upon this estimate.

II. The laws which regulate divorce. We shall have to consider, —

III. Woman's general civil position; and, —

IV. The right of suffrage.

Fortunately for us, Chancellor Kent talks plain English. He tells us exactly what the law means, and sets it forth as if it were written to be understood; which is not exactly the case with all his predecessors.

As to the estimate of woman on which the laws are based, we have, in connection with what we have already quoted from English law-books, the following statement: —

"But as the husband is the guardian of the wife, and bound to protect and maintain her, the law has given him a reasonable superiority and control over her person; and he may even put gentle restraints upon her liberty, if her conduct be such as to require it. The husband is the best judge of the wants of the family, and the means of supplying them; and, if he shifts his domicile, the wife is bound to follow him." — *Kent's Commentaries*, vol. ii. p. 180.

The best comment on this is found, I think, in a story told by Mrs. Stowe, who says that she once saw a little hut perched on a barren ledge of the Alps, out of reach of human help, and without pasture; but a little below it were stretches of sweet Alpine grass, inviting to eye and foot, and capable of affording sustenance to goats and sheep. "How long have you lived here?" asked Mrs. Stowe of the old woman. "Above forty years." — "And what

made you come so far up? Don't you like the meadow?" — "I don't know," was the reply: "it was the *man's notion.*"

It is somewhat questionable, whether this man *would* be the best judge of the wants of his family, Chancellor Kent to the contrary notwithstanding; as also what might be his idea of "gentle restraint," in case the wife had refused to "shift her domicile." As to property, Kent proceeds: —

The general rule is, that the husband becomes entitled, on the marriage, to all the goods and chattels of the wife, and to the rents and profits of her lands; and he becomes liable to pay her debts and perform her contracts.

1. If the wife have an inheritance in land, he takes the rents and profits during their joint lives. He may sue in his own name for an injury to the profits of the land; but, if the husband himself chooses to commit waste, the wife has no redress at common law.

2. If the wife, at the time of her marriage, hath an estate for her life, the husband be-

comes seized of such an estate, and is entitled to the profits during marriage.

3. The husband also becomes possessed of the chattels real of the wife; and the law gives him power, *without her consent*, to sell, assign, mortgage, or otherwise dispose of, the same as he pleases. Such chattels real are liable to be sold on execution for his debts (vol. ii. p. 133). If he survive his wife, the law gives him her chattels real by survivorship.

4. If debts are due to the wife before marriage, and are recovered by the husband afterward, the money becomes, in most cases, absolutely his own.

On the other hand, the husband is, —

1st, Obliged to provide for his wife out of his fortune, or her own that he has taken into his custody, of what the court calls "necessaries," — these again, of course, to be dependent on the "*man's notion*"! and, —

2d, Becomes liable for her frauds and torts during coverture, — the law understanding, as well as a merchant, that it is useless to sue a "broken bench."

The *indulgence* of the law toward the wife, we are then told, is founded on the idea of force exercised by the husband: a presumption only, which may be repelled. What this indulgence is, we may well be puzzled to guess, unless the phrase indicate that she is not to be prosecuted for theft, where *both* are guilty; and yet, if the presumption that he compelled her to steal be *repelled*, she *may* be prosecuted, and found guilty.

A wife cannot devise her lands by will; nor can she make a testament of chattels, except it be of those which she holds *en autre droit*, without the license of her husband. It is not strictly a will, then, only an appointment, which the husband is bound to allow (vol. ii. p. 170).

The laws are essentially the same in Pennsylvania, Virginia, North Carolina, South Carolina, Kentucky, and New York; in the latter State, of course, only as applicable to marriages contracted before the passage of the new bill. It is the same in all the States, with

one or two Western exceptions; because the passage of a new law never annuls *pre-existing* contracts. In consequence, practice becomes contradictory and intricate; and most lawyers not only *feel*, but *show*, a great dislike to new laws on that account.

In regard to marriage and divorce, Kent says that the English practice was, not to grant divorce for unfaithfulness on the part of the *husband;* and the early settlers of Massachusetts made the same distinction, creating a difference at the very outset in the moral responsibility of the two, fatal alike to happiness and civilization.

In 1840, the policy of South Carolina continued so strict, that there had been no instance, since the Revolution, of a divorce pronounced by a court of justice, or an act of the legislature.

In Massachusetts, the law was, that divorce could only be had for criminality. In Vermont, New Jersey, Kentucky, Mississippi, and Michigan, divorce from "bed and board"

may be had for extreme cruelty; and, in Michigan, for wilful desertion for three years.

In Indiana it is rendered for any cause, at the judgment of the court.

In Illinois, divorce may be had for the usual causes, and for drunkenness or cruelty, or such other cause as the court shall think right; and, in such cases, the wife does not lose her dower. These differences in statute law indicate, one would think, a variety sufficient to test in time all the theories of reformers and experimentalists.

As to the consistency of the law, Poynter says, —

"It is singular to see a marriage *annulled* on account of the misspelling or suppressing of a name, which would be held *valid* against the lasting misery of the parties."

By cruelty is meant "reasonable apprehension of bodily hurt." Mere austerity of temper, petulance of manners, rudeness of language, a want of civil attention, even *occasional* sallies of passion, do not amount to that

cruelty which the law can relieve. The wife must disarm her husband by the *weapons of kindness!*

I have shown you upon what estimate the general common law of the United States is based, as regards both property and divorce. It is needless to say that this estimate is very little to be preferred to that of older countries; but, when the reformers of our cause are tauntingly asked what good they have done, they may reply proudly, though they should point to the changes of legislation during the last ten years alone. Since 1850, the laws have been changed in at least nineteen States. The credit of this change should certainly rest with the men and women of this reform; for, in every State, its sympathizing friends helped to frame the new laws.

Whether justly or not, Rhode Island claims the honor of leading the way in such changes. In 1844, the Hon. Wilkins Updike introduced a bill into her legislature, securing to married women their property under certain regula-

tions. The step was in the right direction. In 1847, Vermont passed similar enactments. In 1848–9, Connecticut, New York, and Texas followed; in 1850, Alabama; in 1853, New Hampshire. In 1855, Massachusetts passed an act of a still more comprehensive kind. It was essentially the same as that introduced into her senate, in 1852, by the Hon. S. E. Sewall. It was not wholly satisfactory to those who prepared it, but was the best it was thought possible to pass.* In 1856 and 1857,

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* A law, apparently favorable to all widows, passed the Massachusetts Legislature at the last session. It seems to me, however, to bear the marks of a law passed for a special case. I have made several applications in the proper quarters for information concerning it, but have received nothing in return.

CHAP. 164. — AN ACT CONCERNING THE PROVISIONS FOR WIDOWS IN CERTAIN CASES.

Be it enacted, &c., as follows: —

SECT. 1. — When a man dies, having lawfully disposed of his estate by will, and leaving a widow, she may, at any time within six months after the probate of the will, file in the probate-office, in writing, her waiver of the provisions made for her in the will; and shall, in such case, be entitled to such portion of his real and personal estate as she would have been entitled to if her husband had died intestate: *provided, however*, that, if the share of the personal estate to which she would thus become entitled shall exceed the sum of ten thousand dollars, she shall, in such case, be entitled to receive in her own right the said amount of ten thousand

the Legislatures of Kentucky, Missouri, Indiana, Ohio, Rhode Island, and Maine, altered their property-laws, — Rhode Island advancing somewhat on her first step.* Wisconsin

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dollars, and to receive the income only of the excess of said share above said sum of ten thousand dollars during her natural life. If she makes no such waiver, she shall not be endowed of his lands, unless it plainly appears by the will to have been the intention of the testator that she should have such provisions in addition to her dower.

SECT. 2. — Upon application, made by the widow or any one interested in the estate, the judge of probate may appoint one or more trustees, to receive, hold, and manage, during the lifetime of the widow, the portion of the personal estate of her deceased husband, exceeding ten thousand dollars, of which she is entitled to receive under this act.

SECT. 3. — The twenty-fourth section of the ninety-second chapter of the General Statutes is hereby repealed.

Approved April 9, 1861.

In a case on trial in the Superior Court to-day (Oct. 3, 1861), Chief-Justice Allen ruled that the law of 1855, allowing married women to do business on their own account, separate and apart from their husbands, did not exclude them from entering into business-partnerships with men other than their husbands.

* On the 7th of April, 1861, the Ohio Legislature passed a bill concerning the Rights and Liabilities of Married Women.

Sect. 1 conveys the impression, that all married women may control their rents and issues of real estate belonging to them at marriage, or separately received after.

Sect. 5, however, says "that this law shall not affect any rights which may have *become* vested in any person at the time of its taking effect;" which, of course, cuts off from its beneficial results all persons previously married.

and Iowa have followed; and it is not likely that any new States, unless they should be Slave States, will repeat the old barbarisms.

I have given Rhode Island the precedence she claims; but there are certain statutes of the State of Illinois, as early in date as January, 1829, which deserve to be alluded to, on account of their unusual liberality.

If married, and over the age of eighteen years, a woman in Illinois may, *in spite* of her husband, devise her real estate, and bequeathe her personal estate, to any one for ever.

The wife may administer on her deceased husband's estate, in preference to all others,

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It seems a perfectly simple matter to a woman to obviate the difficulties and disappointments which arise in this way.

Let parties married under the old law, but desiring to benefit by the new, go before a magistrate, and state their wish; and then let the decision in their favor be published in the regular way.

Such a method would not benefit parties at variance; but it would benefit a large class of women engaged, or desiring to engage, in independent business.

The Ohio law repeals a former law of 1857, which secured to all married women the control of the sale or the disposal of personal property exempt from execution: so its benefits are of a nature by no means unmixed.

if she apply within sixty days. On her husband's death, she inherits one-half of his real estate in fee-simple, absolute; and the whole of his personal estate, with her rights of dower in addition.

The wife has not *legally* the first title to the guardianship of her child on the demise of her husband; but she has it by a kind of *comity*, the consent of public opinion and the courts.

In reference to the wife's inheriting from the husband, my correspondent, the Hon. William H. Herndon, says, —

"You will perceive a difference in the two sections relating to the wife and husband as inheriting from one another, favorable to the wife apparently. In the twenty-second section you will find, that, in case of the wife's death without children, the husband inherits one-half of her real estate in fee-simple, absolute; but nothing is said about her personal. This is because the common law has already given him her personal estate on her marriage."

So we see that the State of Illinois did not quite divest itself of the barbarisms of the common law.

In a later letter, Mr. Herndon continues: —

"Our Illinois Legislature has this winter (1860–61) enacted a law, allowing women (married women) all their property, — real, personal, mixed, — free from all debt, contract, obligation, and control of their husbands. This law puts man and woman in the same position, as far as property-rights and their remedies are concerned. This is right, — just as it should be. For my life, I cannot see why there should be any distinction between men and women, when we speak of rights under government. A woman's rights are identical with a man's. Where he is limited, she should be; where she is limited, he should be." *

In Rhode Island, the civil existence of the husband and wife is but one; and, though the letter of the law considers her property acquired by trade or inheritance as technically her own, still it is no longer under her single control. If, as a wife, she sells merchandise, the buyer becomes a debtor to her *husband and herself.* If she makes a purchase,

* This expression of Mr. Herndon's opinion gains additional interest from the fact that he has been for seventeen years the legal partner of Abraham Lincoln, now President of the United States.

her note is good for nothing, unless her husband's signature is affixed to it. He can dispose of the whole of her personal estate, unless the buyer has been previously notified by *her*, in writing, that the property is exclusively her own. Her real estate the husband cannot sell: but *even of this* she cannot dispose by will; so, perhaps, it might as well be sold. The absurdity becomes ludicrous, when we remember that the law makes her competent to devise any number of millions, so long as it is invested in bank-stock or merchandise.

In the State of Vermont, there are three peculiar provisions: —

First, If the husband abscond without making sufficient provision for his wife, she is *permitted* (*!*) to use her own property and earnings, or the earnings of her minor children, to secure a support. This *permission* indicates the tender mercies of the common law, and reminds us of the Helvetian peasant-woman.

Second, She is exempted from personal restraint during the pendency of a divorce suit.

Third, A mother and her illegitimate child may inherit from each other.

A married woman may devise her real estate, and it is exempt from attachment for the sole debts of her husband. She may have her husband's life insured, the insurance to be made payable to her or her children. If he should be put into the penitentiary, she may transact business as if she were a *feme sole*.

The laws of inheritance are liberal; and the common law prevails by statute, when not repugnant to any recorded statute.

In Connecticut, in 1855, all the real estate owned at the time of marriage, or subsequently inherited by the wife, rests absolutely in her. All her personal estate passes to her husband; but all that she may afterward receive remains in her right, her husband being only her legal trustee. Her earnings are subject to his trusteeship, and nothing more. She is the guardian of her own chil-

dren; and the court always confirms this right, unless she is incapacitated. In case of divorce, the father is entitled to the children, unless objection is made. On the decease of the husband childless, one-half of his personal estate goes to the wife, and a life-interest in one-third of the real; or the whole, if it be needed for her support.

In New Hampshire, the common law prevails for the most part. What express enactments she passed in 1853 seem to refer rather to making the position of a deserted wife equivalent to that of a *feme sole* than any thing else.

As regards Massachusetts, it is common to say that the legislation of 1855 leaves very little to be desired, beside the right of suffrage; but a keen eye still detects more than one shortcoming. The custody of the wife's person still vests in the husband.

With reference to the guardianship of children, the custom is in advance of the law; while her power to make a will is so care-

fully guarded, that it might as well be surrendered.

A married woman in Massachusetts can make no contract to bind her, except one strictly relating to her trade, business, or property. She cannot, for instance, indorse a note, or be a surety for another person in any way.

In Maine, since 1857, a wife may hold the wages of her own labor.

In Ohio, at the same date, the law gave this right only *under conditions*. Long before any such changes took place, however, the current of public opinion often forced courts to decide against the common law, and in accordance with equity, — equity not technically, but divinely, considered.

Judge Graham, of the Court of Common Pleas in Perry County, Penn., made such a decision in a suit where a wife claimed return of earnings loaned by her to her husband, and accumulated *after* marriage. The legal question brought before Judge Graham was,

"Can a wife maintain a suit against her husband?" He decided that she could legally hold him to a contract of the kind under consideration; and a verdict was rendered for the woman, in the sum of $2,508.

In August, 1859, Mrs. Dorr put in a claim for $40,000 on her husband's estate, in the Court of Insolvency in Worcester County. The court objected to entertaining the claim until after the choice of an assignee. The hearing was never completed; some private adjustment taking its place. The claim was said to be the first of the kind in the Commonwealth.

We come now to the consideration of the Property Bill, passed in the spring of 1860 by the State of New York. Not only as the latest act of specific legislation, but as the most complete provision ever made by any government to outwit the common law, it demands our attention. After it was passed, a deficiency relating to the rights of guardianship was discovered, and a supplement was

added. By these two acts, the "New-York Tribune" tells us that at least five thousand women in that State are redeemed from pauperism, and established in peaceful homes.

But the supplement bears on one important point, which should be alluded to. According to the common law, as I showed in referring to England, a daughter owes service *only* to her father. The mother, who bore and nursed her; who has trained her up, it may be by painful sacrifices, to habits of propriety and thrift, — has no claim upon her service, even in her minority. By conferring on the mother, in case of the father's decease, all the rights, remedies, privileges, and responsibilities in law appertaining to the father, the new act meets the difficulty.

Before quitting the subject, we cannot refrain from alluding to the fact, that, as early as 1849, the State of New York had passed a qualified measure in regard to property; and directing your attention to the manifest truth, that every imperfect act of legislation consti-

tutes a new set of exceptions to general rules, and very undesirably complicates legal practice.

If reforms are not to be unpopular, they should be simple and complete.*

In commenting on the passage of these bills, advocated by Mrs. Stanton before the committees of the Assembly and the Senate, the "New-York Tribune" says, —

"Mrs. Stanton talked forcibly. It is needless for me to say that she talked earnestly of woman's sufferings, — sweetly of her endurance, eloquently of her rights. When she talked of her right to be protected in the enjoyment of her property, of her right to be released from the bondage of an ill-assorted marriage, she was listened to with marked favor. She pleaded these demands with the feeling of a true woman; and she carried the conviction, that she was not asking more than policy, as well as justice, demanded should be conceded. When she claimed that her voice should be heard on the hustings, and her vote be received at the ballot-box, she was earnest and eloquent and *plausible;* but she must have felt that she was not convincing her audience, and she did not."

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* See note, pages 126, 127.

Here the single word *plausible* vitiates, as cunning reporters well know how to do, the whole effect of the sentence. Far more reasonably, the "Tribune" might have said she was earnest, eloquent, and *sensible;* and so have spurred its readers to thought instead of ridicule. His criticism, however, launches fairly our last subject of discussion. It is needless to say, that nowhere in the United States has woman the full power of suffrage.

In New Jersey, women formerly possessed, and often exercised, this right. By the Constitution, adopted July 2, 1776, the privilege of voting was accorded to all inhabitants, of full age and clear estate, who had resided for a certain time in the country, and who had fifty dollars in proclamation-money.

In 1790, a Quaker member of the Assembly had the act so drawn as to read "he or she." Until 1807, women often voted, especially in times of great political excitement: at such times, for the most part, "under influence," we may presume. Many voted in the presi-

dential contest of 1800; and a newspaper of that period thanks them for unanimously supporting John Adams in opposition to Jefferson. So they were supposed, at times, to act independently. At an election in Hunterdon County in 1802, the ballots of some colored women elected a member of the legislature. Probably this fact, by stimulating the local prejudice against color, and the fading-out of all aristocratic distinctions, which left no property qualifications on the statute-book, led to a change; for, in 1807, an act was passed, limiting the right of suffrage to "free white male citizens of twenty-one years."

In later times, committees of intelligent men, in Wisconsin, Michigan, and Ohio, have reported in favor of granting to women the right of suffrage; but the question was lost in the ballot which followed.

If the constitution prepared for Kansas should be accepted by the people, single women will be empowered to vote there. In Nebraska, the lower house passed a vote, con-

ferring the privilege; but it was too late in the session for the question to come before the upper branch.

In 1858, a proposition to amend the Constitution of the State of Connecticut, so as to extend the franchise to women, received eighty-two votes in the House of Representatives. It was defeated by a majority of forty-five. In 1852, the Kentucky Legislature, in providing for the election of school-trustees, enacted that "any widow, having a child between six and eighteen years, may vote in person or by proxy."

A provision thus limited by public opinion and prejudice would probably have very little force. I have understood that such a provision has taken effect in some parts of Michigan, and it has also been recommended to the State of Massachusetts. Very early in the history of our Government, its inconsistencies became a matter of comment among women themselves. How could it be otherwise? How can she be said to have a right to *life*,

who has never consented to the laws which may deprive her of it; who is steadily refused a trial by her peers; who has no voice in the election of her judges? How can she be said to have a right to *liberty*, whose person, if not yet in custody, almost inevitably becomes so on her maturity; who does not own her own earnings; who can make no valid contract, and is taxed without representation? How can that woman be said to possess either the right or the reality of *happiness*, who is deprived of the custody of her own person, of the guardianship of her children, of the right to devise or share her property?

The government is tyrannical which leaves a single citizen in this predicament. What is to be said of a government which enforces it upon half its subjects?

It is not strange then, that, half in jest, half in earnest, the wife of John Adams wrote to him in 1776 to ask if it "were generous in American men to claim absolute power over wives at a moment when they were emanci-

pating the whole earth." Nor was it strange, that, in a more serious mood, Hannah Corbin of Virginia should write to her brother, Richard Henry Lee, on the same subject.

The American Colonies were struggling against the mother-country, on the ground that taxation and representation should be inseparable.

The "National Intelligencer" has to confess, when it tells the story, that it was not strange if "strong-minded" women of that era, finding themselves *taxed,* should wonder why they could not vote.

Mr. Lee wrote from Chantilly in reply, March 17, 1778:—

"I do not see," he says, "that any thing prevents widows, having large property, from voting, notwithstanding it has never been the case either here or in England. Perhaps it was thought unbecoming for women to press into tumultuous assemblies. . . . Perhaps it was thought, that, as all those who vote for taxes must bear the tax, none would be imposed, except for the public good.

"For both the widow and the single woman," he continues, "I have the highest respect; and

would, at any time, give my consent to secure to them the franchise, though I do not think it would increase their security.

"The Committee of Taxation," he adds, "are regularly chosen by the freeholders and housekeepers; and, in the choice of them, you have as legal a right to vote as any person."

Mr. Lee thinks, that, in a few minutes' conversation, he could "content" his sister upon the subject; but eighty years have passed away, and the question is still unsettled.

What he calls a "woman's security" is proved to be no security, even in the small matter of money; for men are constantly imposing taxes, the burden of which *they* are never to bear. As I have shown, in treating of labor, what position women hold toward the State in the matter of employment, I will not repeat the statement here. Let these pages bear no other burden than that of woman's civil rights, — "woman's rights," — a phrase which we *all* hate; which soils the lips that use it; which women speak with such unction as a slave might clank his chains!

Soils the lips? Not because it is a phrase which stirs the ridicule and the contempt of the weak-minded; not because *you* consider it only the second term of the Bloomer equation: but because the necessity to use it shows how little has yet been done; shows that men still dwell on distinctions of sex, in preference to identities of duty; that women are playthings still in the popular estimate, — creatures of the nursery and the drawing-room, but not angels of God, joint-heirs of immortality.

We have not laid a secure foundation for any statement on this subject, unless we have made it clear that "woman's rights" are identical with "human rights;" that what men do for women, they do in far *wider* measure for themselves; that no father, brother, or husband, can have all the privileges ordained for him of God, till mother and sister and wife are set free to secure them according to instinctive individual bias.

The subject would have no interest for me,

if it were but a selfish clamor of one class for advantages over another; but it does interest me, — interest beyond all earthly debate, — because, in its evolution, there unfolds also the highest interest of our common humanity.

That public opinion has been somewhat conquered, the reception given to women in the lyceum is alone sufficient to show. When a woman of good social standing struggles with convention on the one hand, and womanly affection on the other, she still stands *on the platform* somewhat as she *did at the stake;* but, on the other hand, the awakening public interest has nurtured a class of women, who owe all that they have and are to the platform itself.

With no oppressive restrictions in their circumstances, — endowed with strong good sense and a vigorous talent, — they have won their way to the public esteem; and are stronger and healthier than most women, only because they have had an object for life and thought to grasp.

What will most help women in the matter of labor, and, through labor, to their "civil rights," is a new conception of the dignity of labor on the part of the educated classes, men as well as women.

Harriet Hosmer comes back from Rome to queen it over our men; Rosa Bonheur drives a tandem of Flemish horses through a square of canvas, and over the very necks of her critics: but we want women who shall turn the trades into fine arts. Do you smile at the expression? It is legitimate. France has already answered my demand. A finer statue than the "Moses" of Michael Angelo would be one womanly model of patient thoroughness. A finer picture than the glowing pencils of Titian and Claude ever fused into a canvas would be the prospective elevation of manual labor.

The fine arts are already obedient to woman's will. To *what* woman is it reserved to make the useful arts pay tribute? Dependent upon the "right to labor," as we have al-

ready seen, is "woman's civil equality." If all the fields of human labor are thrown absolutely open (and you admit that they ought to be); if women enter and grow wealthy therein; if every second woman, for instance, were an intelligent property-holder, — is it credible that she, or her husband for her, would remain contented in her present minority? Would she not want a seat in the legislature to protect her property, a vote to control appropriations and taxes? There are no revolutionists like the industrial classes.

It was the discontent of merchants and artisans which hunted Charles Stuart to the block, and paved the way for English freedom. It was the discontent of trade, a long-entertained moral disgust, culminating in indignant contempt at a Stamp Act, which secured American *independence*, — I wish we could say, American *freedom* as well. Create, then, a class of wealthy working women, you who are ambitious of a female franchise, and society will be forced to give you your desire.

Wendell Phillips says, that, when woman is once brought to the ballot-box, men will cry out, "Educate her!" in self-preservation. If this be true (and I am not sure that it is; for a great many popular elections are at this moment carried in the Middle and Southern States, to come no nearer home, by the *un*educated class, partly by the dram-shops indeed), — if this *be* true, however, it is a "poor rule which does not work both ways;" and we may go farther than Mr. Phillips, and say, he will also cry out, "Give her something to do!" that she may understand the interests of property, and be qualified to plead for them. Mr. Phillips plants himself upon the right of suffrage, and *goes back* to secure education and free labor, for State reasons. He has every right to do it; but, on the other hand, *we* may rest upon our undoubted right to education, and go *forward*, with safe, strong steps, to claim the right of suffrage. When a majority of women find the means of thorough education open, then a much greater number will

seek actual employment, and immediately the interests of property will compel them to clamor for suffrage. Do not misunderstand me. It is not a nation of paid underlings, of ever so intelligent clerks and apprentices, men or women, that will control the springs of government, and overthrow institutions as well as prejudices, if they stand in their way: it is the heads of firms, the movers in great undertakings, the proprietors of mills, the builders of ships, the contractors for supplies, persons conversant with large interests, and quick to see their jeopardy, which, as women no less than men, must secure the elective right.

How I should rejoice to see a large Lowell mill wholly owned and managed by women! What is to make it possible? — only, that the unoccupied women of wealth and rank, at this moment in the Commonwealth, should combine to build or buy such a mill. Suppose it *well* managed, representing ultimately a million of dollars: do you believe it would long remain

without political power? Just as the testy trade of Upsal demanded the franchise for its eighty-one women, so would the Lowell mill.

Every year, these ten years, our sturdy friend Dr. Hunt has sent up her protest to the city assessors. She has not quite had the heart, as I wish some woman had, to let them sell her household gods over her head, for non-payment of taxes; but the City Government sits as serene and patient under her inflictions as if she had never spoken. Her protests probably go back to the pulp of the paper-mill; and, but for the newspaper, we should never know that they were written. But five thousand female property-holders, calling their own caucus, and storming the City Hall with well-concerted words, would compel any government to listen; would compel committees to sit, and departments to act. Let it be your first duty, then, to add to the number of intelligent female workers.

Last summer, I heard one of our friends

say, that the reason that men were not willing that women should enter medical societies, and receive medical diplomas, was, that they were unwilling to be detected in their own double-dealing and malpractice. I should not be willing to indorse a statement so broadly made. Mean men may justify it: but the men I have known, the men who have been at once my inspiration and my strength, — these men were not mean; yet among them even the bravest doubted, at first, as to the expediency of our discussion.

These men have felt a tender reverence for moral purity in woman. They have seen laborers of the lower class fall as if smitten by a pestilence. They had not faith to save the world at such a cost. From the malpractice and guilty dread of mean men, then, from the sensitive horror of the noblest, let us learn, at least, that the duty woman owes the State is a *moral* duty. A full understanding of this will give her courage to press her claims. It is the power of conscience and love which

she is to bring to bear on the ballot-box, and which is to mould, with her aid, questions and interests hitherto untouched by any higher impulse than the love of gain.

I cannot leave this statement of human rights, without claiming for woman one right of which men very commonly deprive her; in behalf of which society makes no clamor, and about which the most radical reformers say very little. I mean, woman's right to find man in his proper place, as counsellor and friend.

As *father*, to find him interested, equally with his wife, in the spiritual custody and training of his daughters; giving thus some portion of each day to imbuing young womanly souls with manly strength.

As *brother*, to find in him wise respect for womanhood, and helpful free communion.

As *husband*, to find him, unless there is manifest interposition of Providence, always at the head of his family, always the support and counsellor of his wife, as she in turn is

to be his; making his love her shelter, his strength her dependence, his experience her guide, his manliness the complement of her womanliness.

As a *son*, to find him always anxious and ready to minister, provident to think, patient to bear, and willing to act; never shirking, from idleness, the duty which an active mother does not shrink from bending, perhaps *breaking*, beneath.

Society sets man free from every conceivable family duty, without a word. On the other hand, it binds women down to them with cords of iron, and is pitiless if a single one be snapped. I do not ask society to require less of woman, but *more* of *man*. There is an immense amount of cant, intentional and unintentional, talked upon this subject. Last January, I heard one of our wisest and best public teachers speak upon the constitution of the family; and, when he had spoken whole pages of solid sense, he said this foolish thing, — that the life of the family rested in the mother; that, when

she died, the children must scatter, the father could not hold them alone, but that the father might be faithless or dissipated, might abide in foreign countries, might wander for years a stranger, and still the family sacredness be unbroken. I do not believe it. I protest against such a view of the family, as a great public evil, and one which no public teacher should strengthen by any heedless or sentimental words.

No man has a right to ask any woman to be his wife, who means to sacrifice her life to his own love of business or pleasure or vagrancy; who does not mean to stand strong at her side till death. I speak for the heart of all womanhood when I say, that no good woman would ever accept such an offer, if she supposed she were to be idly left to fulfil its duties alone. If God had intended to rear women independent of manly influence, he would never have constituted the family. It is because every woman needs every man that its laws are absolute. If the physical

legitimacy of the family depend upon the mother, the spiritual legitimacy depends upon the holy faithfulness of the father. When death or sickness or imperative duty takes her beloved ones from her, God sends to woman the Comforter, who helps her to bear and do her double duty. Yet even this angel is born of a voiceless sorrow. It was in recognition of this human need, as much as of the divine love, that Theodore Parker was accustomed to pray to Him who is *both* Father and Mother.

Do you object, that, under the present constitution of society, man cannot find time for this fidelity? When woman becomes an active worker, adding to the resources of the household, man is set free from a portion of his care. The future offers him ample time; the present, more than he uses. I wish I could see him as anxious to make acquaintance with his own young children as with the gay society of his neighborhood.

The actual guardianship of society is now thrown into woman's hands. It does not

belong to her: it belongs to men *and* women.*

Individual men shrink from the idea of being "governed by their wives." From tra-

* This passage was originally prompted by some reflections on the changes which have occurred in domestic life in Boston.

Here the family, even among those of the highest social rank, had once a sacred simplicity pleasant to remember. Men were accustomed to take their three meals with their wives and children. The latest dinner-hour was two, P.M.; and suppers were unheard of. The evening party began at seven; and young girls went freely and uninvited from house to house, with their needle or their book.

How greatly all this is changed, my readers, many of them, feel still more deeply than I; and, with this change, the formation of "clubs" of various kinds has brought about others far more important.

A young married lady of rank and fashion was lately lamenting to me the isolation of husbands and wives, fathers and children, consequent upon club-life.

"But," she concluded with a sigh, "if my husband had no club, he would expect a hot supper for a friend two or three times a week; and how could I ever accomplish that?"

This *indolence* of *women* lies at the bottom of many serious social evils. The woman who will not, health and fortune permitting, make herself responsible in such a case for any number of hot suppers, deserves to see her own happiness wither, her own hearth made desolate.

It is needless to add, that if women would educate themselves to be true and noble companions to their husbands, and resign on their own part all that is unsound, and therefore unbecoming in fashionable life, hot suppers would cease to be a desideratum, and men would pass pleasant evenings without them.

ditional indolence, however, and that sentimental respect which does not permit a man to sit in a woman's presence, the "world" has certainly come to be governed by "*its* wife." Worst of all, nobody punishes it even by a sneer.

The historical development of woman's social progress corresponds to the logical statement upon which I have insisted.

Nearly two centuries ago, Mary Astell would have established a college for women; but the bigotry of Bishop Burnet defeated her plans. The niece of a beneficed clergyman, she had not the courage to press her schemes against the open opposition of the church. Many other efforts, like hers, to secure and make use of education, led the way to a recognition of a decided bias in the individual: so when, a century later, Mary Wollstonecraft was born, the way was open for the assertion of the right to labor. This assertion is hardly indicated in her most celebrated work; but it gives pungency and effect to the dreariest pages of her novels.

In Australia, when a female child is born, the natives break her finger-joints: an artificial distinction, which *they* seem to think more decisive and enduring than God's own limit of sex.

Mary Wollstonecraft saw that civilized society, enslaved by tradition and custom, imposed conditions quite as arbitrary, and, to all practical purposes, broke *every* joint in a woman's body; leaving her helpless, to depend on the strength and skill and affection of man.

A passionate and thriftless father, who spent more than three daughters could earn, and whom she nevertheless protected to her dying day, did not give her a very high idea of the security of such dependence. The response to her appeal was heard in a myriad of distinguished voices, and seen in the consecutive, chosen, and persevering labors of Harriet Martineau in political economy, of Anna Jameson in artistic criticism, of Mary Carpenter in the reformation of criminals,

of Florence Nightingale in sanitary reform, of Caroline Chisholm in emigration, of Mrs. Griffith in marine botany (a special study, which she may almost be said to have created), of Janet Taylor in practical philanthropy among seamen, and nautical astronomy.

This selection of duty shows the advance of the movement. Formerly a woman might be literary in a general sense: now she had the oversight of the field, and might choose the place and kind of her work.

All this prepared the way for the advent of Margaret Fuller, and brought about the condition of which she was the exponent. She caught the rumor which floated in subtle discord all around her. Her quick insight detected every true and living germ of thought in the confused social deposits and exhalations. Out of the discord, she wrought a quaint and scholarly music; out of the refuse, she enriched a fragrant garden: and this song, this outgrowth, had an essential music and beauty, and were caught at once to the popular heart.

That the division of labor was already taking place, was obvious enough to her: so she claimed, in advance, the right of suffrage. Society was already prepared to make this claim, but only discovered its readiness as it listened to her enthusiastic song. Like Deborah, our friend struck her cymbals; and, when the heart of the people shouted consent, they "made her a judge over them."

Although it was doubtless owing to many older causes, it seemed as if her statement of the "great lawsuit" in 1844 led to the first Woman's Convention at Seneca Falls in 1848; and, in 1850, the National Woman's-rights Association began the yearly work in which it has ever since persevered.

Man, as well as woman, has been forced to respect this work, moved by the moral destitution in the lowest, and the profane inanity in the highest, ranks of life, which is the result of our social depravity.

Profane inanity, I repeat; for every helpless woman is a living, intolerable blasphemy

against the Most High. Not more a blasphemy than every helpless man; but society neither expects, defends, nor provides for, helpless *men*. It is only the helpless woman who is expected and approved.

Often do we hear it said, that no law forbids American women to *work*.

Neither, it has been responded, is there any *law* which forbids Chinese women to *walk;* but the careful ligatures, so closely pressed by unsuspecting mothers about those tender feet, do not do their work more surely than the inevitable restrictions of society.

In summing up this constantly accruing list of influences and changes, I must again direct your attention to the fact, that, from the earliest dawn of modern civilization, women have been, in some nations at least, invested with political power.

The mock-marriage, by which the woman's entailed suffrage served a fraudulent purpose; the abbesses called to Parliament in right of abbey-lands, the permission accorded to the

eighty-one women of Upsal, the position of the French "Dames de la Halle," the female stockholders in the East-India Company, that one persistent female property-holder in Nova Scotia, the fifty-dollar proclamation-money in New Jersey, — all indicate that there never *has* been, and never *will* be, any serious difficulty about woman's voting in any age or any country where the right to vote depends upon the possession of property, and where she herself professes to desire it.

Understand, then, that the abstract right to vote is not the question for you to consider: that was settled some hundreds of years ago.

The practical question for American men to put to themselves is, whether their own democratic experiment is a failure. Will you go back to the property basis for your own franchise? or do you still profess to believe that man — as man, as child of God — has a right to reign, which does not depend upon broad doubloons or broad acres? And, if man

has this right upon a simple human ground, how can you deny it to woman?

Will you say that she is not human, — that she has no soul?

Even Mahomet did better than that. Some one once asked him if the marriage-tie were immortal, and if a husband might claim his wife in the next world: —

"If the man be the superior being," he replied, "he can claim his wife or not, as he chooses; but, if the woman be the superior, the decision must rest with her."

And what Mahomet thus prophesied of the world to come is clearly true of the world that is. There is no such thing as cheating either God or humanity.

Let him who aspires to rule *make himself superior* in understanding and moral purpose, and he *will* rule.

No possibilities, visible or invisible, need daunt him; but, let him be false by one hair's breadth, and he carries his doom in his own bosom as certainly as the flawed crystal at the approach of frost.

You are, then, to base your demand for woman's civil rights upon her simple humanity, — the value of the soul itself.

If you deny this foundation for her, you deny it for yourselves, and the Declaration of Independence is only an impertinent pretence.

It may not be easy to push this truth home, and force your friends and neighbors to consider it; but, once convinced in your own minds, you cannot escape from the responsibility.

Wendell Phillips once told us of an old catechism, printed, I think, at Venice in 1563, which contained the following question and answer: —

Q. How shall I show my obedience to God?

A. By never doing any thing which is disagreeable to my neighbor.

Is it possible that this catechism is still in general use?

Fashionable morality is of so loose a sort, that to do any thing disagreeable to one's

neighbor is still, in the estimation of most people, the unpardonable sin. People who are capable of hesitating on that account need not be greatly anxious about their responsibility.

Our cause does not need them; resting, not on timid self-deceivers, but on immutable truth, and the hallowed recognition of woman herself.

Society still cries, like King John in the play, —

> "If not, fill up the measure of her will;
> Yes, in some measure, satisfy her so,
> That we shall stop her *exclamation!*"

And woman, serener than Constance, may whisper back, —

> "Wherefore, since law is perfect wrong,
> Why should the law forbid my tongue to cry?"

THE END.

L'ENVOI.

Now press the clarion on thy woman's lip,
(Love's holy kiss shall still keep consecrate,)
And breathe the fine, keen breath along the brass,
And blow all class-walls level as Jericho's
Past Jordan. . . . The world's old;
But the old world waits the hour to be renewed.

AURORA LEIGH.

Two of far nobler shape, erect and tall, —
Godlike erect, with native honor clad
In naked majesty, — *seemed lords of all:*
And worthy seemed; for in their looks divine
The image of their glorious Maker shone, —
Truth, wisdom, sanctitude severe and pure;
Whence true authority in men."

MILTON.

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